



Cater v. State

2010 Ark. 192 (2010) | Cited 0 times | Supreme Court of Arkansas | April 22, 2010

MOTION FOR RULE ON CLERK MOTION TREATED AS MOTION FOR BELATED APPEAL; GRANTED.

Appellant, Lee Cater, by and through his attorney, James W. Harris, has filed a motion for rule on clerk, which we will treat as a motion for belated appeal. Cater entered a conditional plea of guilty to two counts of possession of a controlled substance with intent to deliver and one count of felon in possession of a firearm. The judgment and disposition order was entered of record on December 1, 2009, making the notice of appeal due to be filed on December 31, 2009. It was not filed until January 5, 2010.

When counsel for Appellant attempted to lodge the record in this court on March 31, 2010, the clerk rejected it because of the untimely notice of appeal. Relief from the failure to perfect an appeal is provided as part of the appellate procedure granting the right to an appeal. *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). This court clarified its treatment of motions for rule on clerk and motions for belated appeals in *McDonald*. There we said that there are only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or, there is "good reason." *Id.* at 116, 146 S.W.3d at 891. We explained as follows: Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected. The party or attorney filing the appeal is therefore faced with two options. First, where the party or attorney filing the appeal is at fault, fault should be admitted by affidavit filed with the motion or in the motion itself.

There is no advantage in declining to admit fault where fault exists. Second, where the party or attorney believes that there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present.

Id. (footnote omitted). While this court no longer requires an affidavit admitting fault before we will consider the motion, an attorney should candidly admit fault where he has erred and is responsible for the failure to perfect the appeal. See *id.*, 356 Ark. 106, 146 S.W.3d 883.

In accordance with *McDonald*, Mr. Harris has candidly admitted fault for not timely filing the notice of appeal. Accordingly, the motion is treated as a motion for belated appeal and granted. A copy of this per curiam will be forwarded to the Arkansas Supreme Court Committee on Professional Conduct.

