

SUPREME COURT OF ARKANSAS

Hall v. State

2014 Ark. 426 (2014) · No. CR-14-700 · Decided October 9, 2014

SUMMARY

The Arkansas Supreme Court considered Androus Hall’s pro se motion for belated appeal from an order denying his motion to dismiss and vacate a sentence. Because the notice of appeal was timely, the court treated the motion as one for rule on clerk and denied it, finding that Hall failed to establish good cause for the untimely tender of the record.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	October 9, 2014
DOCKET	CR-14-700
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought a belated appeal from the denial of a motion to dismiss and vacate his sentence. Because the notice of appeal was timely but the record was not timely tendered, the Supreme Court treated the motion for belated appeal as a motion for rule on clerk and denied it.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Androus Hall v. State of Arkansas

TOPICS

- appellate procedure
- post-conviction relief
- criminal procedure
- preservation of error

PRACTICE AREAS

- appellate procedure
- criminal procedure
- post-conviction relief

QUESTIONS PRESENTED

1. Whether a timely motion for belated appeal should be treated as a motion for rule on clerk when the notice of appeal was timely but the record was not tendered within ninety days.
2. Whether Hall established good cause for failing to timely perfect the appeal.
3. Whether Hall provided a sufficient record for the Supreme Court to address the merits of his claims.

HOLDINGS

1. When a notice of appeal is timely filed, a motion seeking a belated appeal based on the failure to timely tender the record may be treated as a motion for rule on clerk.
2. The appellate record must be tendered to the Supreme Court within ninety days after the date of the notice of appeal.
3. A petitioner who fails to perfect an appeal in accordance with Arkansas procedural rules bears the burden of establishing good cause for the failure, even when proceeding pro se.
4. A petitioner seeking appellate relief must provide a sufficient record for the court to address the merits of the claims; failure to do so supports denial of relief for procedural default.

KEY QUOTATIONS

“Because petitioner has not provided a record sufficient to address the merits of his claims, he has failed to establish good cause for the procedural default.” (at 2)

FACTUAL BACKGROUND

Hall sought appellate review of an order denying his motion to dismiss and vacate a sentence. Although he timely filed his notice of appeal, he did not tender the record within the required ninety-day period and submitted only a partial record. Hall attributed the delay to uncertainty over whether he had been granted pauper status and whether the record-preparation fee could be waived, but he supplied no documentation confirming that the circuit court improperly required payment or otherwise caused the delay.

PROCEDURAL HISTORY

In 2013, Hall filed a pro se motion in the Phillips County Circuit Court to dismiss and vacate his sentence. The circuit court denied the motion on January 30, 2014. Hall filed a timely notice of appeal on February 25, 2014, but tendered only a partial record on August 15, 2014, and sought permission for a belated appeal. The Supreme Court treated the request as a motion for rule on clerk and denied relief because Hall failed to provide a sufficient record or establish good cause for the untimely tender.

DISPOSITION

other

CASES CITED

- *Mitchael v. State*, 2012 Ark. 256 (per curiam)

- Martin v. State, 2014 Ark. 187 (per curiam)
- Davis v. State, 2012 Ark. 70 (per curiam)
- Kennel v. State, 2014 Ark. 165 (per curiam)
- Bannister v. State, 2013 Ark. 412 (per curiam)

OPINION

PER CURIAM.

Cite as 2014 Ark. 426 SUPREME COURT OF ARKANSAS No. CR-14-700 ANDROUS HALL Opinion Delivered October 9, 2014 PETITIONER PRO SE MOTION FOR BELATED V. APPEAL [PHILLIPS COUNTY CIRCUIT COURT, NO. 54CR-96-271] STATE OF ARKANSAS RESPONDENT HONORABLE L.T. SIMES, JUDGE MOTION TREATED AS MOTION FOR RULE ON CLERK AND DENIED. PER CURIAM In 2013, petitioner Androus Hall filed a pro se motion to dismiss and vacate a sentence imposed in the Phillips County Circuit Court.

On January 30, 2014, the circuit court entered an order that denied the motion. Petitioner filed a notice of appeal on February 25, 2014, and he tendered a partial record to this court with a motion for belated appeal on August 15, 2014.

The motion is now before us. Because petitioner's notice of appeal was timely filed, we treat the motion for belated appeal as a motion for rule on clerk under Arkansas Supreme Court Rule 2-2 (2014). *Mitchael v. State*, 2012 Ark. 256 (per curiam). Arkansas Rule of Appellate Procedure—Criminal 4(b) (2014) requires that the record must be tendered to this court within ninety days of the date of the notice of appeal.

When a petitioner fails to perfect an appeal in accordance with the prevailing rules of procedure, the burden is on the petitioner, even if he is proceeding pro se, to establish good cause for the failure to comply with procedural rules. *Martin v. State*, 2014 Ark. 187 (per Cite as 2014 Ark. 426 curiam).

In the motion, petitioner asserts that the record was not timely tendered because the circuit clerk declined to prepare the record until petitioner's status as an indigent prisoner was "certified" by the court. In support of this argument, petitioner points to a motion for extension of time to file record and a motion to file a partial record that he filed in the circuit court.

In the two motions, petitioner averred that the clerk had notified him that the fee for preparation of the record could not be waived until an order was entered granting petitioner's motion to proceed as a pauper, which had been filed on the same date as the notice of appeal. Petitioner now contends that the judge "returned the order granting leave to proceed in forma pauperis," but he also asserted in his motion for extension of time that the judge instructed petitioner that he must pay the fee.

Petitioner claims that he showed proof that he had a zero balance in his trust account, and he appears to contend that he should therefore not be required to pay a filing fee. The partial record before us does not contain an order either granting or denying petitioner's motion to proceed in forma pauperis. Petitioner has provided no documentation in support of his claim that the judge incorrectly ordered him to pay a filing fee to have the record prepared.

In any case, it is petitioner's burden to provide a sufficient record for this court to address the merits of his claims. *Davis v. State*, 2012 Ark. 70 (per curiam); see also *Kennel v. State*, 2014 Ark. 165 (per curiam); *Bannister v. State*, 2013 Ark. 412 (per curiam).

Because petitioner has not provided a record sufficient to address the merits of his claims, he has failed to establish good cause for the procedural default. Because he has not 2 Cite as 2014 Ark. 426 established good cause, he has not met his burden for relief on a motion for rule on clerk. Motion treated as motion for rule on clerk and denied. *Androus Hall*, pro se petitioner.

No response. 3