ARKANSAS SUPREME COURT

No. CR 06-487

NOT DESIGNATED FOR PUBLICATION

AUSTIN COOPER
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered **May 25, 2006**

PRO SE MOTION FOR BELATED APPEAL [CIRCUIT COURT OF MILLER COUNTY, CR 92-292-2, HON. JOE EDWARD GRIFFIN, JUDGE]

MOTION DENIED

PER CURIAM

Petitioner Austin Cooper is an inmate incarcerated in the Arkansas Department of Correction. Petitioner filed a *pro se* petition for writ of *habeas corpus* pursuant to Act 1780 of the 2001 Acts of Arkansas, codified as Ark. Code Ann. §§ 16-112-201–16-112-207 (Repl. 2006), which was denied by order entered January 20, 2005. On February 7, 2005, petitioner filed an "application for evidentiary hearing" and a "request for reconsideration." The trial court entered on April 12, 2005, an order that denied the application for evidentiary hearing.

Petitioner now seeks leave to proceed in this court with an appeal. A petitioner has the right to appeal a ruling on a petition for postconviction relief, which includes the dismissal of a petition for writ of *habeas corpus*. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (*per curiam*). However, along with that right, goes the responsibility to file a timely notice of appeal within thirty days of the date the order was entered in accordance with Ark. R. App. P.–Civ. 4(a).

The only notice of appeal in the partial record before us was filed on May 20, 2005, and is not within the thirty-day period as to either the order entered January 20, 2005, or that entered April 12, 2005. If a petitioner fails to file a timely notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (*per curiam*).

Although he provides a number of arguments as to why our rules should be other than as they are, the only reason petitioner provides for his failure to file the notice of appeal is that, while he mailed the notice within the time required as to the April 12, 2005 order, the notice was not filed promptly. Petitioner alleges that he timely filed a notice of appeal as to the order denying the writ of *habeas corpus* that was entered January 20, 2005, asserting that such a notice was filed on February 10, 2005. Petitioner's notice of appeal as to the denial of his application for evidentiary hearing references such a notice, but no other notice of appeal is included in the partial record before us.

This court has previously declined to adopt the mailbox rule that is accepted in some courts, and which provides that a *pro se* inmate files his or her petition at the time the petition is placed in the hands of prison officials for mailing. *See, e.g., Hamel v. State*, 338 Ark. 769, 1 S.W.3d 434 (1999). An item tendered to a court is considered tendered on the date it is received and file marked by the clerk, not on the date it may have been placed in the mail. Petitioner is solely responsible for filing his brief with the clerk. Petitioner has not shown good cause for his delay in filing his notice of appeal as to the second order.

Motion denied.

Gunter, J., not participating.