

Case Summary

Christopher Hovis appeals his convictions and twenty-year sentence for Class C felony assisting a criminal and habitual offender enhancement, challenging his sentence on numerous grounds. The State responds that Hovis's belated notice of appeal was untimely filed. We agree with the State and therefore dismiss Hovis's belated appeal.

Facts and Procedural History

In December 2002 the State charged Hovis with Class C felony assisting a criminal, Class D felony arson, Class D felony removal of a body, and being a habitual felony offender. In June 2003 Hovis pled guilty as charged. On August 25, 2003, the trial court merged arson and removal of a body into assisting a criminal and sentenced Hovis to eight years for assisting a criminal enhanced by twelve years for being a habitual offender.

Several years later, on August 17, 2009, Hovis, by counsel, filed a Verified Motion to File a Belated Notice of Appeal pursuant to Indiana Post-Conviction Rule 2(1). Appellee's App. p. 3-8. The trial court granted Hovis's motion on August 19, 2009. *Id.* at 48. A little more than two months later, on October 21, 2009, Hovis, by counsel, filed a belated notice of appeal. Appellant's App. p. 11, 13.

Discussion and Decision

The State argues that Hovis did not timely file his belated notice of appeal and therefore we do not have jurisdiction over this appeal. Because Hovis did not pursue an appeal within thirty days of his August 25, 2003, sentencing, he was required to seek permission to file a belated appeal pursuant to Indiana Post-Conviction Rule 2(1). Hovis

thus filed a Verified Motion to File a Belated Notice of Appeal pursuant to Post-Conviction Rule 2(1) on August 17, 2009, which the trial court granted two days later on August 19, 2009.

Indiana Post-Conviction Rule 2(1)(f)(1) provides that if the petition for permission to file a belated notice of appeal includes a proposed notice of appeal as an exhibit, then “an order granting the petition shall also constitute the filing of that notice of appeal in compliance with the time requirements of App. R. 9(A).” However, Hovis’s Verified Motion to File a Belated Notice of Appeal did not include a proposed notice of appeal. *See* Appellee’s App. p. 3-8. Thus, the second part of the rule is applicable here: “If the petition does not include a proposed notice of appeal as an [e]xhibit, the time for filing a notice of appeal is governed by App. R. 9(A).” Ind. Post-Conviction Rule 2(1)(f)(2). Indiana Appellate Rule 9(A) provides that “[a] party initiates an appeal by filing a Notice of Appeal with the trial court clerk within thirty (30) days after the entry of a Final Judgment.”

The trial court granted Hovis’s petition on August 19, 2009; thus, Hovis had thirty days from this date to file his belated notice of appeal. Thirty days from August 19, 2009, was September 18, 2009. He, however, did not file his belated notice of appeal until October 21, 2009. Hovis acknowledges this filing date in his brief. *See* Appellant’s Br. p. 4. The State argues in its brief that Hovis’s belated notice of appeal was untimely, and Hovis did not file a reply brief responding to the State’s argument in this regard. Because this Court lacks subject matter jurisdiction over appeals that are not timely

initiated, *see Marlett v. State*, 878 N.E.2d 860, 864 (Ind. Ct. App. 2007), *trans. denied*,
we dismiss this appeal.

Dismissed.

NAJAM, J., and BROWN, J., concur.