

NO. 97-CA-1928-MR

PAUL J. GIBSON

APPELLANT

v.

APPEAL FROM BOYD CIRCUIT COURT
HONORABLE KELLEY R. ASBURY, JUDGE
ACTION NO. 88-CR-0047

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
DISMISSING APPEAL

* * * * *

BEFORE: GUDGEL, Chief Judge, GARDNER and KNOPF, Judges.

KNOPF, JUDGE: Paul Gibson pled guilty to murder on August 23, 1988. He was sentenced to thirty (30) years imprisonment.

Gibson has filed two (2) previous RCr 11.42 motions subsequent to his sentencing. This is his third appeal from the denial of an RCr 11.42 motion. In this appeal he complains that the Commonwealth failed to fulfil its part of the plea agreement by contesting parole. In May 1997 Gibson appeared before the parole board. Parole was denied. Gibson asked if the Commonwealth had contested the granting of his parole but was not given any answer. Thus, based on speculation Gibson maintains that the

Commonwealth failed to satisfy its part of the plea agreement. His motion under RCr 11.42 was to enforce that plea agreement.

The trial court denied Gibson's motion on June 12, 1997. Gibson filed the motion for reconsideration of that order which was denied on June 26, 1997. Gibson's notice of appeal was filed in the circuit court on July 30, 1997. Rule RCr 12.04 provides:

The time within which an appeal may be taken shall be **ten** (10) days after the date of entry of the judgment or order from which it is taken

The motion to reconsider did not toll the time to file his appeal. Cobb v. Carpenter, Ky. App., 553 S.W.2d 290 (1977). Nevertheless, Gibson's notice of appeal was more than a month after the order denying his RCr 11.42 motion and a month after the order denying his motion to reconsider. The timely filing of a notice of appeal is mandatory and jurisdictional. Demoss v. Commonwealth, Ky. App., 765 S.W.2d 30 (1989). Gibson failed to timely file a notice of appeal in this case. Therefore, it is ordered that this appeal is dismissed.

ALL CONCUR.

ENTERED: June 5, 1998

/s/ Wm. L. Knopf
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Paul J. Gibson, Pro Se
Green River Correctional
Complex
Central City, Kentucky

BRIEF FOR APPELLEE:

A.B. Chandler III
Attorney General of Kentucky

Vickie L. Wise
Assistant Attorney General
Frankfort, Kentucky