

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002206-MR

MICHAEL BRENT SIMPSON

APPELLANT

v. APPEAL FROM MENIFEE CIRCUIT COURT
HONORABLE WILLIAM MAINS, JUDGE
ACTION NO. 94-CR-00002

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
DISMISSING APPEAL
** **

BEFORE: COMBS, DYCHE, and GARDNER, Judges.

COMBS, JUDGE: Michael Simpson brings this appeal from an order of the Menifee Circuit Court denying his motion for credit on time served and for relief pursuant to Kentucky Rule of Civil Procedure (CR) 60.02.

In March 1994, Simpson was indicted on one count of first-degree robbery. On June 7, 1995 he entered a guilty plea to the amended charge of second-degree robbery. The trial court entered its final judgment of conviction on September 7, 1995. Simpson was sentenced to five years in the penitentiary. The trial court awarded Simpson two hundred thirty-seven (237) days pre-sentence jail-time credit on the sentence. See KRS 532.120.

After his motion for shock probation was denied, Simpson filed several *pro se* motions requesting additional jail-time credit. Each of these motions was denied by the trial court.¹ No appeal was taken.

On April 23, 1998, Simpson filed a motion pursuant to CR 60.02 (e) and (f). In the motion, Simpson again requested additional jail-time credit. On May 1, 1998, the Commonwealth's Attorney filed a response to the CR 60.02 motion. On July 2, 1998, the trial court denied the motion. More than thirty days later, Simpson filed his notice of appeal on August 20, 1998.

On appeal, Simpson argues that he is entitled to six hundred forty-two (642) days pre-sentence jail-time credit on his five-year sentence. Without addressing the underlying issue that Simpson argues supports his claim for additional jail-time credit, we must affirm the trial court's denial of his motion on jurisdictional grounds.

CR 73.02(1)(a) requires that the notice of appeal be filed within thirty (30) days after the date of notation of service of the judgment or order. CR 73.02(2) mandatorily provides that the failure of a party to file timely a notice of appeal shall result in a dismissal of the appeal. A review of the record indicates that Simpson's notice of appeal was not timely filed within the thirty-day period -- that is, on or before August 2, 1998. Simpson's failure to file timely the

¹Orders denying the motions were entered on January 13, 1997; March 24, 1997; and December 9, 1997.

necessary notice of appeal requires this court to dismiss the appeal.²

The appeal is hereby ORDERED dismissed.

ALL CONCUR.

/s/ Sara Combs
JUDGE, COURT OF APPEALS

ENTERED: June 4, 1999

BRIEF FOR APPELLANT *PRO SE*:

Michael Simpson
LaGrange, KY

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Anitria M. Franklin
Assistant Attorney General
Frankfort, KY

²Having reviewed the record, we note that the issue of jail-time credit was thoroughly discussed at Simpson's sentencing hearing. In the end, the Commonwealth and Simpson's defense stipulated that Simpson was entitled to two hundred thirty-seven days pre-sentence jail-time credit on his five-year sentence.