

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20040979-CA
v.	)	
	)	
Robert Allen Kartchner,	)	F I L E D
	)	September 29, 2005
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2005 UT App 413</span>

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Fourth District, Provo Department, 031404161, 031404031  
The Honorable Lynn W. Davis

Attorneys: Margaret P. Lindsay, Orem, for Appellant  
Mark L. Shurtleff and Matthew D. Bates, Salt Lake  
City, for Appellee

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Before Judges Bench, Greenwood, and Thorne.

PER CURIAM:

This matter is before the court on Robert Allen Kartchner's motion for a ruling regarding whether this court has jurisdiction to proceed. Because Kartchner filed each notice of appeal untimely, we dismiss the appeal.<sup>1</sup>

A notice of appeal "shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from." Utah R. App. P. 4(a). In a criminal case, it is "the sentence itself which constitutes a final judgment from which appellant has the right to appeal." State v. Gerrard, 584 P.2d 885, 886 (Utah 1978). Kartchner's sentence in each case was entered on September 16, 2004. Thus, Kartchner had thirty days after entry of each sentence to file a notice of appeal with the trial court. Kartchner did not file his notice of appeal in either case until November 8, 2004, after expiration of the 30-day time period.

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<sup>1</sup>Kartchner appealed from two criminal cases that were consolidated. See Utah R. App. P. 3(b).

Kartchner suggests that the notices of appeal may be timely because the district court entered a subsequent order in each case on October 20, 2004, entitled "Order Establishing Facts at Sentencing" (the October 20 Orders). On their face, the October 20 Orders do not enlarge the time for appeal, because they do not change the substance or character of the original sentencing orders.

Where a belated entry merely constitutes an amendment or modification not changing the substance or character of the judgment, such entry is merely a nunc pro tunc entry which relates back to the time the original judgment was entered, and does not enlarge the time for appeal; but where the modification or amendment is in some material matter, the time begins to run from the time of the modification or amendment.

State v. Garner, 2005 UT 6, ¶11, 106 P.3d 729 (quoting Adamson v. Brockbank, 112 Utah 52, 185 P.2d 264, 268 (1947); see also Nielson v. Gurley, 888 P.2d 130, 132 (Utah Ct. App. 1994)).

The October 20 Orders, each of which provides certain reasoning behind the sentences entered on September 16, do not affect the substantive rights of the parties or change the character of the original judgments. Accordingly, these orders do not create a new judgment for purposes of determining the timeliness of the notice of appeal. Rather, the time for appeal ran from the date of Kartchner's sentences, rendering the notice of appeal untimely.

Because this court lacks jurisdiction over an untimely appeal, see Glezos v. Frontier Invs., 896 P.2d 1230, 1233 (Utah Ct. App. 1995), we must dismiss Kartchner's appeal.

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Russell W. Bench,  
Associate Presiding Judge

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Pamela T. Greenwood, Judge

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William A. Thorne Jr., Judge