

IN THE UTAH COURT OF APPEALS

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James B. Martin,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20070182-CA
v.)	
)	F I L E D
State of Utah,)	(May 3, 2007)
)	
Respondent and Appellee.)	2007 UT App 155

Third District, Salt Lake City Department, 040917465
The Honorable John Paul Kennedy

Attorneys: Jennifer K. Gowans, Provo, for Appellant
Mark L. Shurtleff and Brett J. Delporto, Salt Lake
City, for Appellee

Before Judges Greenwood, Billings, and Orme.

PER CURIAM:

James B. Martin appeals the dismissal of his petition for post-conviction relief. This case is before the court on its own motion for summary disposition based upon lack of jurisdiction due to the failure to file a timely notice of appeal. See Utah R. App. P. 4(a).

A notice of appeal must be filed "with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from." Id. If an appeal is not timely filed, this court lacks jurisdiction to hear the appeal and must dismiss. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶7, 13 P.3d 616.

On November 15, 2006, the district court issued a memorandum decision. In its decision the district court denied Martin's motion to vacate his convictions and granted the State's motion to dismiss. The decision went on to state: "This constitutes the final order of the Court on the matters referenced herein. No further order is required." Martin then filed a request for an evidentiary hearing, which the district court inexplicably granted on November 28, 2006. Martin claims that because the district court scheduled an evidentiary hearing in response to

his motion, the court obviously did not consider the matter resolved. Martin did not file a notice of appeal until February 27, 2007.

"For an order or judgment to be final, it must dispose of the case as to all the parties, and finally dispose of the subject-matter of the litigation on the merits of the case." Bradbury v. Valencia, 2000 UT 50, ¶9, 5 P.3d 649 (quotations and citation omitted). "In other words, a judgment is final when it ends the controversy between the parties litigant." Id. (quotations and citation omitted). The district court's memorandum decision constituted a final order because it disposed of the subject matter of the litigation and ended the controversy between the parties. Although the district court's subsequent actions in scheduling evidentiary hearings needlessly confused the matter, the effect of the November 15, 2006 order is the same; it unequivocally ended the controversy. Most importantly, Martin's request for an evidentiary hearing did not toll the appeal period. See Utah R. App. P. 4(b) (discussing post-judgment motions that toll period to file notice of appeal); see also Gillett v. Price, 2006 UT 24, ¶8, 135 P.3d 861 (stating that to obtain relief from a judgment, a party must follow applicable rules). Therefore, because Martin did not timely file his notice of appeal within thirty days of the entry of the final order, this court lacks jurisdiction to hear the appeal and must dismiss. See Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989) (stating that if the court lacks jurisdiction over an appeal, it has only the authority to dismiss the action).

The appeal is dismissed.

Pamela T. Greenwood,
Presiding Judge

Judith M. Billings, Judge

Gregory K. Orme, Judge