

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Lemuel Prion,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20080257-CA
v.)	
)	F I L E D
State of Utah,)	(May 22, 2008)
)	
Respondent and Appellee.)	2008 UT App 189

Eighth District, Vernal Department, 070800083
The Honorable John R. Anderson

Attorneys: Lemuel Prion, Draper, Appellant Pro Se

Before Judges Billings, Davis, and McHugh.

PER CURIAM:

Lemuel Prion seeks to appeal the trial court's dismissal of his petition for post-conviction relief. This is before the court on its own motion for summary disposition. Because this court lacks jurisdiction, it must dismiss the appeal.

The trial court entered its order on December 18, 2007. Prion filed a motion for an extension of time to appeal, along with a notice of appeal, on February 21, 2008. The motion for an extension was untimely and, therefore, so was the notice of appeal.

A notice of appeal must be filed within thirty days after the entry of the order appealed. See Utah R. App. P. 4(a). The timely filing of a notice of appeal is jurisdictional. See State v. Bowers, 2002 UT 100, ¶ 5, 57 P.3d 1065. If a notice of appeal is not timely filed, this court lacks jurisdiction and must dismiss the appeal. See id.

Rule 4 of the Utah Rules of Appellate Procedure provides that a trial court may extend the time to appeal for good cause. See Utah R. App. P. 4(e). A motion to extend the time to appeal must be filed no later than thirty days after the initial appeal time has expired. See id. Prion's motion was due no later than February 19, 2008, but it was not filed until February 21.

Accordingly, the motion was untimely and the trial court could not consider it. See Utah R. App. P. 2 (stating that the time frames in rule 4(e) cannot be suspended). Because the motion to extend the time to appeal was untimely, the notice of appeal is untimely and this court lacks jurisdiction over this appeal.

Accordingly, this appeal is dismissed.¹

Judith M. Billings, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge

1. Prion asserts that the trial court erred when it sentenced him to a harsher sentence at resentencing. Although this court cannot reach the issue in this appeal because it lacks jurisdiction, Prion may be able to raise the issue in the context of Utah Rule of Criminal Procedure 22(e), which has no time bar. See Utah R. Crim. P. 22(e).