

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20050006-CA	
v.)		
)	F I L E D	
David Valken-Leduc,)	(August 25, 2005)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2005 UT App 366</td></tr></table>	2005 UT App 366
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Second District, Farmington Department, 011701808
The Honorable Glen R. Dawson

Attorneys: Ronald J. Yengich, Salt Lake City, for Appellant
Mark L. Shurtleff and Matthew D. Bates, Salt Lake
City, for Appellee

Before Judges Davis, Greenwood, and Thorne.

PER CURIAM:

David Valken-Leduc (Leduc) appeals his conviction of murder. This is before the court on the State's motion for summary disposition based on lack of jurisdiction. The State asserts that Leduc's notice of appeal was untimely, thus depriving this court of jurisdiction.

After the imposition of sentence on March 30, 2004, Leduc filed two requests for extensions of time in which to file a motion for new trial. The trial court granted the motions, the first one extending the time until April 26, 2004, and the second one providing until May 31, 2004, to file a motion for new trial. The State asserts that the second extension was ineffective because the trial court may grant an extension of time only within ten days after sentencing. See Utah R. Crim. P. 24(c). However, even giving Leduc the benefit of the second extension, his motion for new trial was untimely, and thus did not toll the time for appeal.

A notice of appeal generally must be filed within thirty days of the entry of the order or judgment appealed. See Utah R. App. P. 4(a). Certain post-judgment motions toll the time for appeal, however, if made timely. See Utah R. App. P. 4(b). A

timely motion for a new trial pursuant to rule 24 of the Utah Rules of Criminal Procedure will toll the time for appeal, and instead the appeal time will run from the entry of the order denying a new trial. See id. However, untimely motions do not toll the appeal time. See id. (providing for appeal time frames from "timely" rule 24 motions); State v. Putnik, 2002 UT 122, ¶8, 63 P.3d 91 (holding untimely rule 24 motions do not toll appeal time).

Under rule 24, a motion for new trial must be made within ten days "after imposition of sentence, or within such further time as the court may fix during the ten-day period." Utah R. Crim. P. 24(c). Even with the benefit of the second extension, Leduc was required to file his motion for new trial no later than May 31, 2004.¹ Leduc did not file his motion for new trial until July 12, almost six weeks after the expiration of the extension. Thus, Leduc's motion was clearly untimely and ineffective to toll the time for appeal.

Because the motion for new trial did not toll the time for appeal, Leduc's notice of appeal is untimely. Leduc did not file his notice of appeal until January 5, 2005, ten months after sentencing and well beyond the thirty-day time frame. As a result, this court lacks jurisdiction and must dismiss this appeal. See State v. Bowers, 2002 UT 100, ¶5, 57 P.3d 1065.

Accordingly, this appeal is dismissed.

James Z. Davis, Judge

Pamela T. Greenwood, Judge

William A. Thorne Jr., Judge

¹Leduc asserts the trial court intended an open-ended extension tied to appointment of counsel. However, the order on its face specifies May 31 as the due date for the motion. There is nothing in the record to indicate the court intended anything else.