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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-17-0841

Kendrick Cook

v.

Alabama Department of Corrections

Appeal from Elmore Circuit Court
(CV-18-36)

On Return to Remand¹

MINOR, Judge.

Kendrick Cook,² an inmate in the custody of the Alabama

¹As explained *infra*, on February 27, 2019, this Court issued an order remanding this case to the Elmore Circuit Court.

²In his pleadings in the circuit court and in his materials in this Court, Cook refers to himself as "Kendrick Cook Bey." In a related petition for the writ of mandamus filed with this Court, Cook states that he is "aligned and bound to the Free Moorish Constitution Act 1 & Act 6 of the

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Department of Corrections ("the Department") at Staton Correctional Facility ("the prison"), asks this Court to reverse the judgment of the Elmore Circuit Court dismissing his petition for a writ of habeas corpus. Because Cook failed to timely file his notice of appeal, however, this Court does not have jurisdiction over Cook's appeal.

Cook's petition challenged his end-of-sentence date and the amount of credit for time served to which he claims he is entitled. The circuit court dismissed Cook's petition on March 27, 2018. Under Rule 4(a), Ala. R. App. P., Cook had 42 days

Moorish Science Temple of America Divine Constitution and Our Authority No. 10105905 as established (Islamic National State) in State of Illinois, Cook County (1928), with due respect to the Constitution for the United States Republic, North America." Petition in case no. CR-18-0197, p. 1. See Nettles v. State, 731 So. 2d 626, 629 (Ala. Crim. App. 1998) (noting that "this Court may take judicial notice of its own records" (citing Hull v. State, 607 So. 2d 369, 371 n.1 (Ala. Crim. App. 1992))).

We refer to Cook simply as "Cook" because, based on the record before this Court, it is not clear that Cook has legally changed his name to include the suffix or surname "Bey." Cf. Nettles-Bey v. Williams, 819 F.3d 959, 960 (7th Cir. 2016) ("Adherents to the Moorish Science Temple change their surnames to include '-Bey' or '-El'."); Johnson-Bey v. Lane, 863 F.2d 1308, 1309 (7th Cir. 1988) ("The suffixes 'El' and 'Bey' refer to the African tribes from which [adherents to the Moorish Science Temple claim] black people are descended.").

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to file a notice of appeal. Ordinarily, a notice of appeal is considered filed on the date it is received by the appropriate circuit clerk. Rule 4(a), Ala. R. App. P. But Cook, as "an inmate confined in an institution and proceeding pro se," was entitled to the protections afforded by the "mailbox rule." Rule 4(c), Ala. R. App. P. Under the mailbox rule, Cook had until May 8, 2018, the 42d day following the dismissal of his petition, to place his notice of appeal in the prison's internal mail system. In the unsworn certificate of service on the notice of appeal, Cook claimed to have mailed his notice on May 8, 2018. Two handwritten names were listed as witnesses to the certificate of service: "Grand Shiek Marvin Franklin" and "A.G.S. Morgan Bertran-al-Bey."

The Elmore Circuit clerk did not receive Cook's notice of appeal until May 25, 2018, and the clerk stamped the notice as filed on that date. The appeal was forwarded to this Court, and the Department moved to dismiss the appeal as having been untimely filed.

Rule 4(c), Ala. R. App. P., states that an inmate may show "[t]imely filing ... by a notarized statement that sets forth the date the filing was deposited in the institution's

mail system." The Department's position in its motion to dismiss the appeal is, in essence, that Rule 4(c) requires a notarized statement of when the item was placed in the prison's legal mail system. That position, however, does not reflect the Alabama Supreme Court's interpretation of Rule 4(c).

In Ex parte Wright, 860 So. 2d 1253, 1257 (Ala. 2002), the Alabama Supreme Court held that Rule 4(c) "does not mandate such a notarized statement as the only way to establish the timeliness of a filing." Parris v. Prison Health Servs., Inc., 68 So. 3d 108, 110-11 (Ala. Civ. App. 2009) (emphasis added).

"In Ex parte Wright, [860 So. 2d 1253 (Ala. 2002)], the Alabama Supreme Court noted that 'the filing of [Wright's] notice of appeal in the court required no judicial action' and that the parties did not contest the timeliness of the notice of appeal before the trial court. Wright, 860 So. 2d at 1257. In reversing the Court of Criminal Appeals' judgment dismissing Wright's appeal for untimeliness, the supreme court pointed out that the Court of Criminal Appeals had been the first court to have the opportunity to consider the timeliness of Wright's appeal, and that there had been no evidence before it to contradict the averments in Wright's 'Declaration of Mailing,' which, if true, established that his notice of appeal was timely under the mailbox rule. Therefore, the supreme court remanded the cause with instructions for the trial court to determine whether Wright had timely

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deposited his notice of appeal in the internal mail system of the prison. Id."

Parris, 68 So. 3d at 111.

As recognized in Wright, a notarized statement is not required for a prisoner to be entitled to the protections afforded by the mailbox rule. However, in the absence of a notarized statement, the factual assertions in a prisoner's certificate of service may be disputed, and the trial court is the appropriate tribunal to resolve such a factual dispute. See Parris, 68 So. 3d at 111. Thus, in response to the Department's motion to dismiss, this Court remanded this matter for the circuit court to determine whether Cook's notice of appeal had been timely filed. See note 1, supra.

On remand, the circuit court held a hearing at which Cook and Pamela Sage, the mail clerk for the prison, testified. Cook testified that he placed the petition in the prison's legal mail system on May 8, 2018, the date indicated in the certificate of service in his petition.

The circuit court's order on remand summarizes Sage's testimony as well as the contents of a spreadsheet the Department introduced into evidence. The spreadsheet, a log documenting the processing of inmates' legal mail, indicates

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the name of the inmate sending mail, the addressee, and the date the mail was processed. The spreadsheet indicates that Cook sent only two items through the prison's legal mail system between May 1, 2018, and May 22, 2018. Only one of those items was mailed from Cook to the Elmore Circuit clerk, and the spreadsheet indicates that it was processed on Tuesday, May 22, 2018.

Sage testified that the contents of the prison's legal mailbox are processed each Tuesday and Thursday. Sage stated that if an inmate had deposited mail in the prison's legal mailbox after pickup time, that mail would not get processed until the next pickup day. Thus, according to Sage, Thursday, May 17, 2018, was the earliest that Cook could have placed his mail to the Elmore Circuit clerk in the prison's legal mailbox.

The circuit court found that the mailbox rule applied. However, the circuit court also found Sage's testimony credible, and, thus, it found specifically that the earliest that Cook's notice of appeal could have been mailed was May 17, 2018, making his notice of appeal untimely.

We presume that the circuit court's findings of fact--

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which were based on evidence that was presented ore tenus at the hearing on remand--are correct, and ""[w]e indulge a presumption that the trial court properly ruled on the weight and probative force of the evidence."" Knight v. State, [Ms. CR-16-0182, Aug. 10, 2018] ___ So. 3d ___, ___ (Ala. Crim. App. 2018) (quoting State v. Hargett, 935 So. 2d 1200, 1203 (Ala. Crim. App. 2005), quoting, in turn, another case). Also, ""we make ""all the reasonable inferences and credibility choices supportive of the decision of the trial court."" Id. (quoting Hargett, 935 So. 2d at 1203, quoting, in turn, other cases).

Based on the findings of the circuit court on remand, Cook's notice of appeal was untimely filed. Thus, this Court does not have jurisdiction over the appeal, and the appeal must be dismissed. Rule 2(a)(1), Ala. R. App. P. ("An appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court.").

APPEAL DISMISSED.

Windom, P.J., and Kellum, McCool, and Cole, JJ., concur.