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# Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

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CR-20-0795

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P.B.

v.

State of Alabama

Appeal from Jefferson Juvenile Court  
(JU-21-456.01)

McCOOL, Judge.

P.B. appeals a judgment of the Jefferson Juvenile Court that adjudicated him delinquent on a charge that he had unlawfully possessed a pistol as a minor. See § 13A-11-72(b), Ala. Code 1975.

Facts and Procedural History

On April 20, 2021, Officers Johnny Scott and Daryl Dobbs of the Birmingham Police Department were patrolling a public-housing community in Birmingham when they stopped and approached a large crowd, which included P.B., who was 17 years old. During a Terry<sup>1</sup> frisk of P.B., Officer Scott found a pistol in the pocket of P.B.'s pants; the next day, Officer Scott filed a delinquency petition charging P.B. with unlawfully possessing a pistol as a minor in violation of § 13A-11-72(b).

P.B. subsequently filed a motion to suppress the pistol, arguing that "[t]here was not reasonable suspicion within the meaning of Terry v. Ohio[, 392 U.S. 1 (1968),] when officers searched [P.B.] and discovered what is alleged to be a handgun." (C. 9.) The juvenile court held a suppression hearing and, following that hearing, denied the motion to suppress.

On June 10, 2021, P.B. pleaded "true" to the charge of unlawfully possessing a pistol as a minor, and the juvenile court placed him on probation. Before pleading, however, P.B. reserved the suppression issue for appellate review. That same day, the juvenile court issued the

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<sup>1</sup>Terry v. Ohio, 392 U.S. 1 (1968).

delinquency judgment, and the clerk of the juvenile court entered the judgment into the record later that day. (C. 20.)

On June 16, 2021, P.B. filed a motion to amend the judgment to reflect that he had reserved the suppression issue for appellate review. The juvenile court granted that motion and, on June 24, 2021, amended the judgment in accordance with the motion; the court made no other changes to the judgment. (C. 22.) On July 8, 2021, P.B. filed a notice of appeal.

#### Discussion

On appeal, P.B. argues that the juvenile court erred by denying his motion to suppress the pistol that Officer Scott found during the Terry frisk. However, before we may reach the merits of P.B.'s claim, we must first determine whether P.B.'s notice of appeal was timely filed because, if it was not, this Court has no jurisdiction to consider the appeal. See Wank v. State, 18 So. 3d 972, 974 (Ala. Crim. App. 2009) ("Timely filing of notice of appeal is a jurisdictional requisite, and the appeal must be dismissed for lack of jurisdiction if notice of appeal was not timely filed." (quoting Woods v. State, 371 So. 2d 944, 945 (Ala. 1979))). "Although the parties do not raise any argument regarding this Court's jurisdiction to

hear th[is] appeal[ ], 'jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu.'" MPQ, Inc. v. Birmingham Realty Co., 78 So. 3d 391, 393 (Ala. 2011) (quoting Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987)).

Rule 4(a), Ala. R. App. P., and Rule 28(D), Ala. R. Juv. P., provide that a notice of appeal from a final judgment of a juvenile court must be filed within 14 days of the entry of the judgment. However, in juvenile-delinquency cases, this time is tolled if, within that 14-day period, the prospective appellant seeks relief from the judgment in a motion filed pursuant to Rule 24, Ala. R. Crim. P.,<sup>2</sup> which includes motions for a new trial, motions in arrest of judgment, motions to modify or set aside a sentence, and motions to withdraw a guilty or "true" plea; in that case, the notice of appeal must be filed within 14 days of the denial of the Rule 24 motion.<sup>3</sup> See J.M.A. v. State, 74 So. 3d 487 (Ala. Crim. App. 2011)

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<sup>2</sup>Because "juvenile-delinquency proceedings are 'quasi-criminal in nature,'" W.B.S. v. State, 192 So. 3d 417, 419 (Ala. Crim. App. 2015), the Alabama Rules of Criminal Procedure govern the procedures to be used in such proceedings, except where the Alabama Rules of Juvenile Procedure or a statute specifically addresses the procedures to be used. See Rule 1(A), Ala. R. Juv. P.

<sup>3</sup>Rule 24 expressly includes only a motion for a new trial and a motion in arrest of judgment, but a motion to modify or set aside a

(notice of appeal was timely in a case where the appellant filed a motion for a new trial within 14 days of the juvenile court's judgment and filed the notice of appeal within 14 days of the denial of that motion). The purpose for tolling the time for filing a notice of appeal while a Rule 24 motion is pending is to allow the movant "to seek redress in the trial court, thereby possibly avoiding the need for an appeal." Ex parte Hitt, 778 So. 2d 159, 162 (Ala. 2000).

In this case, P.B. filed his notice of appeal more than 14 days after the June 10, 2021, judgment; consequently, the notice was untimely unless the time for filing the notice was tolled. As to whether that time was tolled, it is true that P.B. filed a postjudgment motion within 14 days of the judgment. However, that motion sought only to have the judgment amended to reflect that P.B. had reserved the suppression issue for appellate review – a reservation that was required in order to raise the issue on appeal. Adams v. State, 316 So. 3d 260, 262 (Ala. Crim. App. 2020). In other words, P.B.'s postjudgment motion was not a Rule 24

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sentence and a motion to withdraw a guilty or "true" plea are the functional equivalents of a motion for a new trial. Ex parte Holderfield, 255 So. 3d 743, 746 (Ala. 2016); Laakkonen v. State, 293 So. 3d 439, 444 n.4 (Ala. Crim. App. 2019).

motion because it did not seek relief that, if granted, would obviate the need for an appeal. Ex parte Hitt, *supra*. To the contrary, the purpose of P.B.'s postjudgment motion was to ensure that his appeal would go forward and would not encounter any procedural barrier in this Court. Thus, the specific issue presented by this case is whether the time for filing a notice of appeal is tolled by a postjudgment motion that does not seek relief from the judgment but, instead, seeks only to ensure that the record reflects that the movant reserved an issue for appellate review at the guilty-plea or "true-plea" hearing. That issue, in turn, raises the following threshold question: if such a motion is not a Rule 24 motion – and it is not – then what type of motion is it?

Rule 29, Ala. R. Crim. P., allows a court, upon motion of a party or the court's own initiative, to correct "[c]lerical mistakes in judgment, orders, or other parts of the record," as well as "errors arising from oversight or omission." In other words, as the Alabama Supreme Court has put it, the purpose of Rule 29 is "to make the judgment or the record speak the truth." Ex parte Jones, 322 So. 3d 970, 976 (Ala. 2019). Rule 29 does not, however, "'authorize [a] court to render a different judgment.'" Id. (quoting Cornelius v. Green, 521 So. 2d 942, 945 (Ala.

1988)). A judgment is a "different" judgment if it is the result of the court exercising "judicial reasoning" or "judicial discretion" to "change its mind" regarding the original decision, Deramus Hearing Aid Ctr., Inc. v. American Hearing Aid Assoc., Inc., 950 So. 2d 292, 295 (Ala. 2006), or if it otherwise "extend[s] to matters of substance." Great Atl. & Pac. Tea Co. v. Sealy, 374 So. 2d 877, 883 (Ala. 1979).

In this case, the sole purpose of P.B.'s motion to amend the judgment was to ensure that the judgment would "speak the truth," Ex parte Jones, 322 So. 3d at 976, as to what had occurred at the "true-plea" hearing, i.e., that P.B. had reserved the suppression issue for appellate review. Put differently, P.B. sought to have the juvenile court correct what he perceived to be the court's "oversight or omission" in failing to acknowledge that fact in the judgment. Rule 29. Thus, it is clear to this Court that P.B.'s postjudgment motion was, in substance, a Rule 29 motion. This conclusion is reinforced by the fact that the juvenile court granted that motion and yet, in doing so, did not "change its mind" regarding its original decision or otherwise exercise any "judicial reasoning," Deramus Hearing, 950 So. 2d at 295, nor did the amendment alter any of the substantive provisions of the judgment, Great Atl. & Pac.

Tea Co., supra; instead, as P.B. requested, the court merely set forth in writing that P.B. had complied with a procedural requirement that would allow him to raise the suppression issue on appeal. Accordingly, having determined that P.B.'s postjudgment motion was a Rule 29 motion, we must next determine whether such a motion tolls the time for filing a notice of appeal.

"Rule 29 is taken directly from Rule 60(a), Ala. R. Civ. P.," Ex parte Jones, 322 So. 3d at 976 (quoting Dollar v. State, 687 So. 2d 209, 210 (Ala. 1996)), and both this Court and the Alabama Court of Civil Appeals have held that a Rule 60(a) motion does not toll the time for filing a notice of appeal in a civil case. See Deramus v. Alabama Bd. of Pardons and Paroles, 84 So. 3d 163, 166 (Ala. Crim. App. 2011); and Landers v. Landers, 812 So. 2d 1212, 1216 (Ala. Civ. App. 2001). In addition, "[a] correction to a judgment pursuant to Rule 60(a) relates back to the date of the original judgment and does not extend the time for taking an appeal." C.S. v. Pike Cnty. Dep't of Human Res., 293 So. 3d 398, 401 (Ala. Civ. App. 2019). Thus, we likewise hold that a Rule 29 motion does not toll the time for filing a notice of appeal and that a correction to a judgment pursuant to Rule 29 relates back to the date of the original



judgment and does not extend the time for filing a notice of appeal. The United States Court of Appeals for the Third Circuit has reached the same conclusion with respect to motions filed pursuant to Rule 36, Fed. R. Crim. P., which is similar to our own Rule 29. See United States v. Torres-Montalvo, 644 F. App'x 195, 197 (3d Cir. 2016) (noting that a judgment corrected pursuant to Rule 36 ""does not affect the finality of the original judgment nor does it toll the time limits within which an appeal must be taken"" (quoting Gillis v. Hoechst Celanese Corp., 4 F.3d 1137, 1139 n.1 (3d Cir. 1993), quoting in turn Barris v. Bob's Drag Chutes & Safety Equip., Inc., 717 F.2d 52, 55 (3d Cir. 1983))).

In sum, P.B.'s postjudgment motion, which sought to have the judgment amended to reflect that P.B. had reserved the suppression issue for appellate review, was a Rule 29 motion. A Rule 29 motion does not toll the time for filing a notice of appeal. Deramus, supra; Landers, supra. Also, the juvenile court's Rule 29 amendment related back to the original judgment and did not extend the time for filing a notice of appeal from that judgment. C.S., supra. Thus, P.B. was required to file his notice of appeal within 14 days of the June 10, 2021, judgment, which he failed to do. This Court has no authority to extend the time for filing a

notice of appeal, Loggins v. State, 910 So. 2d 146, 151 (Ala. Crim. App. 2005), and, as noted, an untimely notice of appeal divests this Court of jurisdiction to consider the appeal. Wank, supra. Accordingly, we must dismiss the appeal. See Deramus, 84 So. 3d at 167 ("Deramus's appeal of the original judgment ... is untimely; thus, this Court lacks jurisdiction to consider the appeal."). "[P.B.'s] remedy, if any, is to file a petition for postconviction relief pursuant to Rule 32.1(f), Ala. R. Crim. P." Johnson v. State, 18 So. 3d 969, 972 (Ala. Crim. App. 2009).

We take this opportunity to clarify an additional issue raised by this case because the issue could arise in other cases. It is true that, if a defendant who pleads guilty or "true" wishes to appeal an issue and does not move to withdraw the plea, the record must reflect that he both reserved and preserved that issue at the guilty-plea or "true-plea" hearing. Adams, 316 So. 3d at 262. However, there is no requirement that the court's judgment reflect the reservation of the issue, and, indeed, in many cases it does not. See, e.g., Dison v. State, 21 So. 3d 1273, 1274 n.2 (Ala. Crim. App. 2009) (holding that the defendant's reservation of an issue was evidenced by the transcript of the sentencing hearing); Woodruff v. State, [Ms. CR-19-0113, December 16, 2020] \_\_\_ So. 3d \_\_\_,

\_\_\_ n.2 (holding that the defendant's reservation of issues was evidenced by a document attached to the guilty-plea form and the circuit court's acknowledgment of that document at the guilty-plea hearing); Ex parte Mullins, 920 So. 2d 589, 590 (Ala. 2005) (holding that the defendant's reservation of an issue was evidenced by "the trial court's comments at the conclusion of the guilty-plea hearing"); and Treslar v. State, 948 So. 2d 570, 572 (Ala. Crim. App. 2005) (holding that the defendant's reservation of an issue was evidenced by notations on the guilty-plea form and the plea-agreement sheet). In this case, the transcript of the "true-plea" hearing clearly indicates that P.B. reserved the suppression issue for appellate review. (R. 38-39.) Thus, P.B.'s motion to amend the judgment to reflect that fact and the juvenile court's amendment to that effect were unnecessary.

APPEAL DISMISSED.

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