

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE PIMA COUNTY MENTAL HEALTH NO. A20170058

No. 2 CA-MH 2019-0001-SP
Filed January 23, 2020

Appeal from the Superior Court in Pima County
No. A20170058001
The Honorable James E. Marner, Judge

APPEAL DISMISSED

COUNSEL

Joel Feinman, Pima County Public Defender
By Michael J. Miller, Assistant Public Defender, Tucson
Counsel for Appellant

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Appellee

OPINION

Judge Eckerstrom authored the opinion of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

ECKERSTROM, Judge:

¶1 P.L. has appealed from a jury verdict concluding he is a sexually violent person (SVP), *see* A.R.S. §§ 36-3701 to 36-3717, and the trial court's order committing him to the custody of the Department of Health Services. In a recently filed memorandum decision, we dismissed his appeal for lack of jurisdiction. P.L. then filed a timely motion for reconsideration.

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¶2 By way of background, in December 2017, the state filed a petition alleging P.L. was an SVP. After a three-day trial concluding on October 25, 2018, a jury agreed, and the trial court ordered the same day that he be “committed to the custody of the Arizona Department of Health Services for placement in a licensed facility under the Arizona State Hospital’s control in order to receive treatment.”

¶3 P.L. filed a notice of appeal on December 12, 2018, and a motion seeking a “delayed appeal” on January 15, 2019, in which P.L.’s counsel asserted she had incorrectly believed P.L. had sixty days to file a notice of appeal rather than the thirty-day period prescribed by the governing civil rules. The trial court granted the motion, and P.L. filed a “notice of delayed appeal.” Finding the original notice of appeal untimely, we dismissed the appeal. On reconsideration, we have not changed that conclusion.

¶4 “We are obligated to examine our jurisdiction over an appeal.” *Grand v. Nacchio*, 214 Ariz. 9, ¶ 12 (App. 2006). Because SVP proceedings are “strictly civil in nature,” *State ex rel. Ariz. Dep’t of Health Servs. v. Gottsfield*, 213 Ariz. 583, ¶ 7 (App. 2006), appeals from an SVP commitment are governed by the Arizona Rules of Civil Appellate Procedure, *see* Ariz. R. Civ. App. P. 1(b). Rule 9(a), Ariz. R. Civ. App. P., requires that a notice of appeal be filed “no later than 30 days after entry of” the order appealed from. When a notice of appeal is not timely filed, this court does not have jurisdiction to decide the appeal. *See James v. State*, 215 Ariz. 182, ¶ 11 (App. 2007). And, a trial court does not have authority to extend the time for appeal unless a party did not receive notice of the entry of judgment. Ariz. R. Civ. App. P. 5(b), 9(f). P.L. made no such claim. Thus, because he did not timely appeal from the October 25 verdict and commitment order, we lack jurisdiction.

¶5 In his motion for reconsideration, P.L. has argued that we may overlook this jurisdictional defect on due process grounds because his trial counsel was ineffective in failing to timely file his notice of appeal. We have recognized that those subject to involuntary commitment have a due process right to the effective assistance of counsel, and such claims may properly be raised in the trial court. *See In re Maricopa Cty. Mental Health No. MH 2010-002637*, 228 Ariz. 74, ¶ 1 (App. 2011). But the rules governing civil appeals and the cases interpreting those rules are unambiguous. Neither this court nor the trial court has authority to permit a delayed appeal in civil proceedings. We acknowledge that no remedy is available where, like here, counsel’s ineffectiveness results in the loss of the opportunity to appeal. If our supreme court intended otherwise, it would

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modify the applicable rules, as it has done in other contexts. *See, e.g.,* Ariz. R. Crim. P. 32.1(f); Ariz. R. P. Juv. Ct. 108(B).

¶6 We deny P.L.'s motion for reconsideration and dismiss his appeal.