

Cite as 2023 Ark. App. 557
ARKANSAS COURT OF APPEALS
DIVISION I
No. CV-22-798

KEVIN SPIVY

APPELLANT

Opinion Delivered December 6, 2023

V.

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FIRST
DIVISION

STATE OF ARKANSAS

APPELLEES

[NO. 60CR-22-336]

HONORABLE LEON JOHNSON,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

Kevin Spivy appeals from the November 28, 2022 order of the Pulaski County Circuit Court granting the State’s motion to dismiss his appeal to that court from the North Little Rock District Court. He argues that the circuit court erred because his failure to comply with the thirty-day filing requirement of Arkansas Rule of Criminal Procedure 36.1(b) (2022) to perfect an appeal to the circuit court was excusable because he did not validly waive his constitutional right to counsel during the district court proceedings. We disagree and affirm the circuit court’s dismissal for lack of jurisdiction.

On February 3, 2021, Spivy was found guilty, after representing himself in a bench trial in the North Little Rock District Court, of having committed the Class B misdemeanor of reckless driving, for which he was fined \$320. The district court’s docket sheet noted:

Mr. Spivy came to court and said he has an atty. But he wasn't present. Judge asked if he wanted to go ahead with the trial, and he said yes.

....

An atty. called later and wanted a new court date but never sent in an appearance for Mr. Spivy.

Spivy had the right to appeal to the Pulaski County Circuit Court within thirty days from the date of entry of the judgment in the district court. *See* Ark. R. Crim. P. 36.1(b).

On May 28, the North Little Rock District Court cited Spivy with contempt of court for failing to pay the court-ordered fine. On January 7, 2022, Spivy appeared in the North Little Rock District Court for plea and arraignment on the contempt charge, paid the fine in full, and the contempt charge was dismissed.

On January 31, 362 days after the North Little Rock District Court entered its judgment, Spivy filed a notice of appeal in the Pulaski County Circuit Court. On the same day, the record from the district court was lodged with the circuit court clerk's office.

On March 7 and April 5, Spivy appeared in the Pulaski County Circuit Court regarding various pretrial matters. On July 26, the State filed a motion to dismiss the appeal based on Spivy's failure to timely appeal the February 3, 2021 district court judgment well beyond the thirty-day time limit in Ark. R. Crim. P. 36.

The circuit court held a hearing on the State's motion on August 1. Spivy argued that the district court's docket sheet was confusing, but he did acknowledge that the docket sheet reflected that the district court had found him guilty of reckless driving on February 3, 2021. Spivy asserted, however, that his case had been "reset" for trial after February 3, 2021, as

evidenced by the docket sheet's notation that he had pleaded "not guilty" on February 12, 2021. He maintained that his trial had been reset until January 7, 2022, thereby making his lodging the record on January 31, 2022, timely.

The State responded that the docket sheet clearly indicated that the district court had found Spivy guilty of reckless driving on February 3, 2021, and that he had been fined \$320 as a result. The State submitted that the January 7, 2022 court date was not a resetting of the reckless-driving trial but was instead a trial on Spivy's contempt citation for failure to pay his \$320 fine. The State further clarified that the district court had dismissed the contempt citation on January 7, 2022, after Spivy had paid his fines from the reckless-driving conviction.

At the hearing, the circuit court orally granted the State's motion to dismiss, but the written dismissal order for lack of jurisdiction was not filed until November 28. The circuit court determined that the district court had found Spivy guilty of reckless driving on February 3, 2021, as indicated by the district court's docket sheet. Accordingly, the circuit court found that Spivy's lodging of the district-court record on January 31, 2022, was untimely pursuant to Rule 36.1(b). On August 30, Spivy filed a notice of appeal of the circuit court's decision from the bench granting the State's motion to dismiss his circuit court appeal.¹

¹Pursuant to Arkansas Rule of Appellate Procedure–Criminal 2(b)(1) (2022), a notice of appeal filed after a circuit court announces a decision—but before entry of a written order memorializing the decision—is treated as filed on the day after the written order is entered.

Generally, Spivy's appeal of the district court judgment would have been a trial de novo pursuant to Arkansas Rule of Criminal Procedure 36.1(g) (2022). In order to appeal from a conviction in the district court to the circuit court, the defendant must file with the clerk of the circuit court a certified record of the proceedings in the district court. Ark. R. Crim. P. 36.1(c) (2022). The certified record is to be filed with the clerk of the circuit court within thirty days of the date judgment is entered against the defendant in the district court. Ark. R. Crim. P. 36.1(b).

The filing requirement of Rule 36 is strictly enforced and is jurisdictional in nature. *Gruber v. State*, 2020 Ark. App. 561, at 3, 614 S.W.3d 483, 485. There is no provision in the Arkansas Rules of Criminal Procedure permitting a belated appeal of a case from the district court to the circuit court, and Rule 36 expressly provides that it is a defendant's burden to ensure that his appeal from the district court is perfected in a timely manner. The circuit court has no authority to accept untimely appeals, and the Arkansas Supreme Court has steadfastly refused to entertain untimely appeals from the district court to the circuit court. *Roberson v. State*, 2010 Ark. 433, at 3.

Because Spivy failed to properly perfect his appeal to the circuit court, the circuit court lacked jurisdiction to hear the appeal. See *Wells v. State*, 2019 Ark. App. 451, at 5, 588 S.W.3d 99, 102; see also *Petry v. State*, 2020 Ark. App. 162, at 4, 595 S.W.3d 442, 445 (reiterating that a circuit court acquires jurisdiction over a de novo appeal from the district court only when a certified record from the district court is timely filed in the circuit court).

Spivy's pro se status did not protect him from the requirement to lodge the record within thirty days from his reckless-driving conviction. Pro se litigants are held to the same standards as attorneys, including perfecting an appeal under Rule 36. *See Risner v. State*, 2011 Ark. App. 549, at 6.

Because Spivy failed to timely appeal the district court's judgment, the circuit court correctly dismissed his appeal for lack of jurisdiction. While we, of course, have the power to determine our jurisdiction, we lack jurisdiction to determine the merits of this case.² Failure to establish jurisdiction at the circuit court level forecloses a finding of jurisdiction in this court. *Roberson*, 2010 Ark. 433, at 6. Accordingly, we must affirm the dismissal.

Affirmed.

THYER and MURPHY, JJ., agree.

Mac J. Carder, Public Defender, by: *Clint Miller*, Deputy Public Defender, for appellant.

Tim Griffin, Att'y Gen., by: *Brooke Jackson Gasaway*, Ass't Att'y Gen., for appellee.

²*See State v. Herndon*, 365 Ark. 185, 187 n.3, 226 S.W.3d 771, 774 n.3 (2006) (noting a distinction between "jurisdiction to determine jurisdiction" and "jurisdiction to hear the merits of the case"); *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989) (emphasizing that a court always has the power and duty to determine whether jurisdiction exists).