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Filed October 15, 2010

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2010

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the Tenth Judicial Circuit,
Plaintiff-Appellee,	)	Peoria County Illinois,
	)	
v.	)	No. 07-CM-1556
	)	99-CM-2561
	)	
AARON FECHTER,	)	Honorable
	)	James E. Shadid,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE McDADE delivered the opinion of the court:

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Defendant, Aaron Fechter, filed a petition to seal the records of four prior convictions pursuant to section 5 of the Criminal Identification Act (Act) (20 ILCS 2630/5 (West 2006)). On June 30, 2009, the circuit court of Peoria County denied defendant's petition to seal his records. Defendant filed his notice of appeal on August 18, 2009.

This court, on its own motion, ordered defendant to show cause why this appeal should not be dismissed for lack of jurisdiction since the notice of appeal did not appear to have been timely filed. Defendant responded that pursuant to section 5(f) of the Act, the earliest the orders became final was July 30, 2009, 30 days after June 30, 2009, and he filed his notice of appeal

within 30 days of July 30, 2009. The State argues that section(f) does not apply to defendant's petition. Therefore, the order denying defendant's petition to seal his records was a final order for purposes of appeal when entered on June 30, 2009, defendant's notice of appeal was untimely, and defendant's appeal must be dismissed for lack of jurisdiction.

Section (f) provides as follows:

"(f) No court order issued under the expungement provisions of this Section shall become final for purposes of appeal until 30 days after notice is received by the Department." 20 ILCS 2630/5(f) (West 2006).

The State asserts that the sealing of records is controlled under independent provisions of section 5, primarily subsection 5(h). The State argues that the extension of time before an order becomes final granted in section 5(f) applies to the expungement provisions of section 5 but not the sealing of records provisions in section 5(h). The State notes that defendant sought to seal his records but not to expunge his records. The State argues that because defendant did not seek expungement, the order appealed was not "issued under the expungement provisions" of section 5 and, therefore, section 5(f) does not apply.

We ordered the motion to show cause why defendant's appeal should not be dismissed for lack of jurisdiction taken with the case. We now hold that subsection 5(f) does not apply to extend the time the trial court's judgment on defendant's petition became final and, therefore, that defendant failed to properly invoke this court's jurisdiction by timely filing a notice of appeal from the trial court's final order.

First, we find that the subsection of the Act providing for the sealing of records is

independent of the expungement provisions of the Act. Subsection (h)(1) provides as follows:

“(h)(1) Applicability. Notwithstanding any other provision of this Act to the contrary *and cumulative with any rights to expungement* of criminal records, this subsection authorizes the sealing of criminal records of adults and of minors prosecuted as adults.” (Emphasis added.) 20 ILCS 2630/5(h)(1) (West 2006).

The plain language of the statute evinces that any right to the sealing of criminal records is intended to be cumulative to, and therefore independent of, any right to expungement. See *Illinois Independent Telephone Ass'n v. Illinois Commerce Comm'n*, 183 Ill. App. 3d 220, 237, 539 N.E.2d 717, 726 (1988).

Defendant argues that subsection 5(f) applies to the sealing of records provision as well as the expungement provisions of the Act. Defendant argues that the extension of time granted in subsection 5(f) predates the addition of subsection (h) and, therefore, the failure to include the sealing provision in the extension of time is likely due to oversight on the part of the legislature. Defendant claims that further modifications to subsection 5(f), effective January 1, 2010, did in fact expressly include the sealing of records provision of the Act in the extension of time.

However, Public Act 96-707 (Pub. Act 96--707, eff. January 1, 2010 (amending 20 ILCS 2630/5 (West 2008)) only added the last sentence of the first paragraph of subsection (a), which does not involve any extension of time before an order under the Act becomes final, and deleted "may" following "defendant's trial" in the first sentence of subsection (c). Therefore, defendant's argument that subsequent amendments to subsection 5 prove the legislature's intent that the extension of time applies to petitions to seal records as well as to petitions for expungement is

without merit. Further, defendant's argument that the failure to modify subsection 5(f) to include the sealing of records provision within the extension of time was simply an oversight when the legislature added subsection 5(h) in 2004 (see Pub. Act 93--211, eff. January 1, 2004 (amending 20 ILCS 2630/5 (West 2002))) is belied by the fact that in 2005, the legislature re-wrote section 5 of the Act, including amending subsection 5(f), without providing for an extension of time before an order pursuant to subsection 5(h) becomes final. See Pub. Act 93-1084, eff. June 1, 2005 (amending 20 ILCS 2630/5 (West 2004)).

Defendant's arguments that subsection 5(f) applies equally to the sealing of records provision of the Act as well as the expungement provisions of the Act are unpersuasive. "The fundamental objective of statutory construction is to ascertain and give effect to the intent of the legislature. [Citation.] The best indication of legislative intent is the statutory language \*\*\*." *People ex rel. Madigan v. Kinzer*, 232 Ill. 2d 179, 184, 902 N.E.2d 667, 670-671 (2009). The statutory language of subsection 5(f) establishes that the legislature intended the extension of time to only apply to "the expungement provisions" of the Act. Accordingly, we hold that subsection 5(f) does not apply to defendant's petition under subsection 5(h), and the trial court's judgment denying that petition was a final order when entered.

Defendant requested that, should this court agree with the State's position that subsection 5(f) does not apply, we grant him the opportunity to file a motion pursuant to Supreme Court Rule 303(d) (155 Ill. 2d R. 303(d)), supported by a showing of a reasonable excuse for failure to file his notice of appeal within 30 days of the trial court's final order on June 30, 2009. We decline.

Supreme Court Rule 303 reads, in pertinent part, as follows:

“(d) Extension of Time in Certain Circumstances. On motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time, accompanied by the proposed notice of appeal and the filing fee, filed in the reviewing court within 30 days after expiration of the time for filing a notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing.” 155 Ill. 2d R. 303(d).

First, the plain language of Rule 303(d) dictates that the relief is only available when the defendant files his motion within 30 days after expiration of the time for filing a timely notice of appeal. In this case, defendant failed to file a Rule 303(d) motion and accompanying notice of appeal within the time prescribed by the rule. Second, defendant failed to put forth any reasonable excuse for his failure to timely file a notice of appeal other than his reliance on subsection 5(f) of the Act. Defendant failed to address the applicability of subsection 5(f) or any other reasonable excuse for the delay in the substance of his appeal, even in light of this court’s order taking its motion to show cause why the appeal should not be dismissed with the decision of the case.

Defendant has had ample opportunity to assert a reasonable excuse for his failure to timely file his notice of appeal and has failed to do so. Defendant’s reliance on subsection 5(f) was unwarranted and does not constitute a reasonable excuse. Accordingly, defendant’s request to file a late Rule 303(d) motion is denied.

Defendant failed to file his notice of appeal from the trial court’s order denying his

petition pursuant to subsection 5(h) of the Act to seal the records of his criminal convictions in a timely manner. “[T]he timely filing of an appeal is both jurisdictional and mandatory \*\*\*.”

*Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 217, 902 N.E.2d 662, 666 (2009). This court does not have jurisdiction over the instant appeal.

#### CONCLUSION

The defendant’s appeal is dismissed for lack of jurisdiction.

Dismissed.

O’BRIEN and SCHMIDT, JJ., concur.