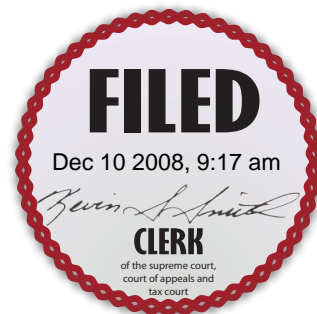


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CHRISTOPHER ROGERS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A05-0804-CR-230

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol Orbison, Judge
Cause No. 49G17-0609-FD-176331

December 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Christopher Rogers appeals his convictions for battery and interference with reporting of a crime, arguing that the evidence is insufficient to support them. The State cross-appeals, arguing that Rogers' Belated Notice of Appeal was untimely filed. We agree with the State and therefore dismiss Rogers' belated appeal.

Facts and Procedural History

On December 4, 2006, a bench trial was held, and Rogers was found guilty of Class B misdemeanor battery and Class A misdemeanor interference with reporting of a crime for offenses committed against the mother of his child. On that same day, the trial court sentenced him to 180 days with 174 days suspended and six days credit for time served for battery and 365 days with 359 days suspended and six days credit for time served for interference with reporting of a crime. Rogers was placed on probation for 180 days and ordered to complete twelve weeks of anger management counseling.

Over one year later, on March 13, 2008, Rogers filed a Verified Motion to File a Belated Notice of Appeal pursuant to Indiana Post-Conviction Rule 2(1). The trial court granted Rogers' motion that same day. Appellant's App. p. 44. On April 16, 2008, Rogers filed a Belated Notice of Appeal. *Id.* at 1-2.

Discussion and Decision

In its cross-appeal, the State argues that Rogers did not timely file his Belated Notice of Appeal and therefore we do not have jurisdiction over this appeal. Because Rogers did not pursue an appeal within thirty days of his December 4, 2006, sentencing,

he was required to seek permission to file a belated appeal pursuant to Indiana Post-Conviction Rule 2(1). Rogers thus filed a Verified Motion to File a Belated Notice of Appeal pursuant to Post-Conviction Rule 2(1) on March 13, 2008, which the trial court granted that same day. *See id.* at 44.

Indiana Post-Conviction Rule 2(1)(f)(1) provides that if the petition for permission to file a belated notice of appeal includes a proposed notice of appeal as an exhibit, then “an order granting the petition shall also constitute the filing of that notice of appeal in compliance with the time requirements of App. R. 9(A).” Here, however, Rogers’ Verified Motion to File a Belated Notice of Appeal did not include a proposed notice of appeal. *See Appellant’s App.* p. 41-44. Thus, we turn to the second part of the rule: “If the petition does not include a proposed notice of appeal as an [e]xhibit, the time for filing a notice of appeal is governed by App. R. 9(A).” Ind. Post-Conviction Rule 2(1)(f)(2).¹ Indiana Appellate Rule 9(A), in turn, provides that “A party initiates an appeal by filing a Notice of Appeal with the trial court clerk within thirty (30) days after the entry of a Final Judgment.”

The trial court granted Rogers’ petition on March 13, 2008; thus, Rogers had thirty days from this date to file his Belated Notice of Appeal. Thirty days from March 13, 2008, was April 12, 2008, which was a Saturday. Because Saturday and Sunday are both non-business days, Rogers had until Monday, April 14, 2008, to file his Belated Notice of Appeal. *See Ind. Appellate Rule 25(A) & (B).* He, however, did not file his Belated

¹ We note that this rule was amended, effective January 1, 2008. The 2007 version provided, “If the trial court finds grounds, it shall permit the defendant to file the belated notice of appeal, which notice of appeal shall be treated for all purposes as if filed within the prescribed period.” P-C.R. 2(1) (2007). It otherwise contained no explicit time limitation.

Notice of Appeal until April 16, 2008. Rogers acknowledges this filing date in his brief. *See* Appellant's Br. p. 4. In its cross-appeal, the State argues that Rogers' Belated Notice of Appeal was untimely, and Rogers did not file a reply brief responding to the State's argument in this regard. Because this Court lacks subject matter jurisdiction over appeals that are not timely initiated, *see Marlett v. State*, 878 N.E.2d 860, 864 (Ind. Ct. App. 2007), *trans. denied*, we dismiss this appeal.

Dismissed.

KIRSCH, J., and CRONE, J., concur.