

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.

ATTORNEY FOR APPELLANT:

MARCE GONZALEZ, JR.
Merrillville, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DONTE TERRELL PAULK,)

Appellant-Defendant,)

vs.)

No. 45A03-0604-CR-175

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0503-FA-12

October 23, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Donte Terrell Paulk (“Paulk”) appeals the sentence imposed upon his plea of guilty to Possession of Cocaine, as a Class C felony.¹ The State cross-appeals, seeking dismissal of the appeal for lack of jurisdiction. We dismiss.

Issues

Paulk presents the sole issue of whether his sentence is inappropriate.

The State presents a single issue: whether Paulk’s failure to file a timely notice of appeal should result in the dismissal of this appeal.

Facts and Procedural History

On March 3, 2005, Paulk and two accomplices possessed 11.94 grams of crack cocaine at 2173 Garnett Street in Gary, Indiana. On March 5, 2005, the State charged Paulk with three counts of Dealing in Cocaine, as Class A felonies,² two counts of Maintaining a Common Nuisance, as Class D felonies,³ and one count of Battery, as a Class A misdemeanor.⁴ On February 16, 2006, Paulk and the State filed a Stipulated Plea and Agreement, whereby Paulk would plead guilty to Possession of Cocaine, a Class C felony and any other charges would be dismissed. The agreement provided for a sentencing cap of five years.

¹ Ind. Code § 35-48-4-6.

² Ind. Code § 35-48-4-1.

³ Ind. Code § 35-48-4-13.

⁴ Ind. Code § 35-42-2-1.

On March 9, 2006, Paulk pleaded guilty to Possession of Cocaine and the trial court sentenced him to five years imprisonment, with three years suspended to probation. On April 19, 2006, Paulk filed a Notice of Appeal.

Discussion and Decision

The trial court imposed Paulk's sentence, which he now attempts to challenge, in an order dated March 9, 2006. Pursuant to Indiana Appellate Rule 9, "[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." Thirty days after March 9, 2006 was April 8, 2006, a Saturday. Pursuant to Appellate Rule 25, Paulk had until Monday April 10, 2006 to file his Notice of Appeal. He did not file his Notice of Appeal until April 19, 2006, nine days late.

Appellate Rule 9(A)(5) provides: "Unless the Notice of Appeal is timely filed, the right to appeal shall be forfeited except as provided by P.C.R. 2." Paulk did not file a petition for permission to file a belated Notice of Appeal pursuant to Indiana Post-Conviction Rule 2. We therefore lack jurisdiction over Paulk's purported appeal to challenge his sentence. See Davis v. State, 771 N.E.2d 647, 648-49 (Ind. 2002) (holding that a defendant forfeited his right to appeal, when he filed his Notice of Appeal after the thirty-day deadline and did not seek relief under Post-Conviction Rule 2) and Hancock v. State, 786 N.E.2d 1142, 1144 (Ind. Ct. App. 2003) (holding, in accordance with Davis, that this Court must dismiss an attempted appeal for lack of subject matter jurisdiction in the absence of a timely Notice of Appeal or Post-Conviction Rule 2 petition). Paulk's attempted appeal is dismissed as untimely.

Dismissed.

RILEY, J., and MAY, J., concur.