

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001804-MR

GREGORY COLLINS

APPELLANT

v.

APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE JERRY WINCHESTER, JUDGE
ACTION NO. 97-CR-00008

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER DISMISSING APPEAL

* * * * *

BEFORE: BUCKINGHAM, HUDDLESTON, and SCHRODER, Judges.

BUCKINGHAM, JUDGE. Gregory Collins appeals from an order of the Whitley Circuit Court revoking his twelve-month conditionally discharged sentence. As Collins' appeal is untimely, we dismiss it for lack of jurisdiction.

Collins was indicted in February 1997 for the offense of second-degree criminal possession of a forged instrument. (KRS 516.060). On March 4, 1998, he pled guilty to an amended charge of third-degree criminal possession of a forged instrument (KRS 516.070), a misdemeanor, and was sentenced to twelve months in the county jail. This sentence, however, was conditionally discharged for two years on several conditions, including one

that Collins pay \$900 restitution to the Whitley Circuit Clerk by April 3, 1998.

On April 23, 1998, the Commonwealth filed a motion to revoke Collins' conditionally discharged sentence on the ground that he failed to pay restitution. On May 5, 1998, the court entered an agreed order continuing the probation revocation hearing to July 6, 1998. When the case was called on that date, Collins' attorney was present but Collins was not. After conferring with the prosecutor and Collins' attorney, the trial judge stated that Collins' sentence would be reinstated for his failure to pay restitution. The order revoking Collins' probation was entered on the following day, July 7, 1998, and the clerk entered a notation in the record that notice of entry of the order had been sent by first-class mail to all counsel of record on that same day. On July 21, 1998, Collins' attorney filed a notice of appeal.¹

At the time this appeal was filed, Kentucky Rule of Criminal Procedure (RCr) 12.04(3) provided in pertinent part that "[t]he time within which an appeal may be taken shall be ten (10) days after the date of entry of the judgment or order from which it is taken, subject to Rule 12.06"² As the notice of appeal filed herein was filed fourteen days after the order was entered and the clerk made the notation in the criminal docket

¹ The attorney who represented Collins at the trial court level and who filed the notice of appeal is not the same attorney representing Collins before this court.

² This rule has since been amended to allow an appeal to be taken thirty (30) days after the entry of the judgment or order from which it is taken.

pursuant to RCr 12.06, it was untimely. It is well established that "[t]he appellate court lacks jurisdiction unless the notice is seasonably filed." DeMoss v. Commonwealth, Ky. App., 765 S.W.2d 30, 32 (1989). Because we lack jurisdiction to consider this appeal, it must be dismissed.³

It is hereby ORDERED that this appeal is DISMISSED.

ALL CONCUR.

ENTERED: September 24, 1999

/s/ David C. Buckingham
JUDGE, COURT OF APPEALS

³ A motion for a belated appeal has not been filed on Collins' behalf. Such a motion may or may not have merit.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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