

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001510-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
ACTION NO. 97-CR-000986
JOHN POTTER, JUDGE

NORMAN BROOKS

APPELLEE

OPINION AND ORDER
DISMISSING APPEAL

*** *** ***

BEFORE: COMBS, EMBERTON, AND GUIDUGLI, JUDGES.

EMBERTON, JUDGE. Appellant, the Commonwealth of Kentucky, filed a notice of appeal with the Jefferson Circuit Court on June 24, 1999. Appellee, Norman Brooks, moves this Court to dismiss the appeal as untimely taken pursuant to RCr 12.04.

On May 7, 1999, the trial court entered an order granting Brooks's motion to dismiss, but delayed effect of the order for twenty (20) days. On June 24, 1999, the Commonwealth filed a notice of appeal, forty-eight (48) days from the date of entry of the order. Brooks alleges in his motion to dismiss that the notice of appeal was untimely filed pursuant to RCr 12.04, which requires that a notice of appeal be filed on or before thirty (30) days from the date of entry of the judgment. The Commonwealth contends that the appeal was timely filed from the date on which the order took effect - twenty (20) days after its

entry. The sole issue in this motion is at what time the order dismissing Brooks's appeal from the circuit court was final.

An appeal must be taken within thirty (30) days of the date of entry of the order from which it is taken, subject to RCr 12.06. RCr 12.04(3). The Commonwealth appeals from an order entered on May 7, 1999. That the effective date of the order is later than the date of entry of the order is immaterial.

RCr 12.06 requires the circuit court clerk to serve a written notice of the entry of the order on counsel for the defendant or the defendant himself if he is proceeding pro se. RCr 12.06(1). The circuit court clerk is further required to note on the docket sheet the date and manner of service. RCr 12.06(2). This date shall be used to compute the time for filing a notice of appeal under RCr 12.04(3). Id. Thus, the fact that the entry of the order is not adequately noted on the docket sheet does not protect the Commonwealth's right to appeal.

For the foregoing reasons, this Court ORDERS that the appeal be, and it is hereby, DISMISSED.

ALL CONCUR.

ENTERED: November 5, 1999

/s/ Thomas D. Emberton
JUDGE, COURT OF APPEALS

APPELLANT'S RESPONSE:

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ASSISTANT COMMONWEALTH
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APPELLEE'S MOTION:

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