

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000950-MR

DEMETRIUS ARNOLD

APPELLANT

V. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
INDICTMENT NO. 01-CR-002593-002

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
DISMISSING APPEAL

** ** * * *

BEFORE: GUIDUGLI AND MINTON, JUDGES; EMBERTON, SENIOR JUDGE.¹

MINTON, JUDGE: Demetrius Arnold brings this *pro se* appeal from a November 17, 2003, order of the Jefferson Circuit Court. Because Arnold's notice of appeal was not timely filed, we dismiss.

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Arnold was charged with six counts of first-degree robbery² and one count of being a second-degree persistent felony offender (PFO II)³ after he robbed a Wendy's restaurant in Louisville. Following a plea agreement with the Commonwealth, Arnold pleaded guilty to four counts of first-degree robbery and two counts were dismissed.

Shortly after entering the plea, Arnold moved to withdraw his plea. He claimed he "rashly entered into the plea agreement" and felt he could be acquitted if the case went to trial. The circuit court denied his motion to withdraw, and Arnold was sentenced to a maximum of twenty years' imprisonment.

Over a year later, Arnold filed an RCr⁴ 11.42 motion to alter, amend, or vacate his sentence. He claimed he was denied his constitutional rights to due process and equal protection because of prosecutorial misconduct and ineffective assistance of counsel. He also argued the Commonwealth did not have sufficient evidence to charge him with robbery.

On November 17, 2003, the Jefferson Circuit Court denied his motion. Arnold responded by filing a motion for findings of fact and conclusions of law "as to any and all issues asserted in [his] RCr 11.42 motion." Again, the court

² Kentucky Revised Statutes (KRS) 515.020.

³ KRS 532.080.

⁴ Kentucky Rules of Criminal Procedure.

denied his motion. Undaunted, Arnold filed a civil motion, citing CR⁵ 59.05 to alter, amend or vacate his judgment. But, once again, his motion was denied.

Thereafter, Arnold filed a notice of appeal from the November 17, 2003, denial of his RCr 11.42 motion. Although the date on Arnold's "certificate of service" stated the notice was tendered on January 8, 2004, the notice was not actually filed with the circuit clerk until April 24, 2004.

RCr 11.42(7) states that "[e]ither the movant or the Commonwealth may appeal from the final order or judgment of the trial court in a proceeding brought under this rule." All appeals must be filed within thirty (30) days "after the date of entry of the judgment or order from which it is taken" ⁶ If a party fails to timely file a notice of appeal, that failure "shall result in a dismissal or denial." ⁷

Regardless of the date Arnold's appeal was taken—January 8, 2004, or April 24, 2004—it is clear that he did not comply with the procedural requirements to perfect his appeal. At best, Arnold's notice of appeal was tendered almost a month after the thirty day time period had expired; and, at worst, it was filed over five months after the court's final order was

⁵ Kentucky Rules of Civil Procedure.

⁶ RCr 12.04.

⁷ CR 73.02.

entered. We recognize that Arnold is a *pro se* litigant who should be given some leeway regarding his compliance with the niceties of the procedural rules. But the requirements of CR 73.02 are clear and unambiguous; Arnold simply failed to follow the rules. And because Arnold's appeal was not timely filed, we are without jurisdiction to review his arguments on appeal.

Therefore, it is hereby ORDERED that Arnold's appeal be DISMISSED.

ALL CONCUR.

ENTERED: June 17, 2005

\s\ John D. Minton
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Demetrius Arnold, Pro Se
West Liberty, KY

BRIEF FOR APPELLEE:

Perry T. Ryan
Assistant Attorney General
Frankfort, KY

Gregory Stumbo
Frankfort, KY