

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-001402-MR

CHRIS COOPER

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 96-CR-00112

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

BUCKINGHAM, JUDGE: At approximately 6:00 a.m. on March 15, 1996, the appellant, Chris Cooper, drove his truck southbound into the northbound lanes of Wayne Sullivan Drive in McCracken County, Kentucky, and collided head-on with a car being driven by Barbara Darnell, a 52-year old woman who was on her way to work. Darnell died at the scene, and Cooper was convicted of murder and first-degree wanton endangerment.¹ He was sentenced to 22 years in prison for the offenses, and the Kentucky Supreme

¹ The wanton endangerment charge was based on Cooper nearly crashing his truck into a car driven by Jo Story.

Court upheld his convictions and sentence on appeal. Cooper later filed postconviction motions pursuant to RCr² 11.42 and CR³ 60.02, but the court denied both motions. Furthermore, in separate opinions this court affirmed the circuit court's denial of those motions.

On January 7, 2004, Cooper filed a motion asking the circuit court to amend the murder charge to second-degree manslaughter. Because Cooper's convictions and sentence had been affirmed on appeal, the court denied the motion. The order was entered on January 26, 2004. On February 4, 2004, Cooper moved the court to reconsider its order. The court denied the motion in an order entered on February 16, 2004. Cooper filed a third motion on March 16, 2004, again asking the court to reconsider its prior orders. On April 1, 2004, the court entered an order denying that motion. Finally, on May 14, 2004, Cooper filed a motion for the trial judge to recuse or to disqualify himself from the case. On June 1, 2004, the court entered an order denying that motion. The record shows that all four orders were served on Cooper by the clerk on the days they were entered.

On July 15, 2004, Cooper filed a notice of appeal, indicating his intent to appeal from the last order. Although

² Kentucky Rules of Criminal Procedure.

³ Kentucky Rules of Civil Procedure.

the notice of appeal is not clear, it appears that Cooper also intended to appeal from the denial of his motion to amend the murder charge to second-degree manslaughter.

RCr 12.04(3) required Cooper to file his appeal within 30 days after the entry of the orders. The time for appealing from the order denying Cooper's motion to amend the charge began to run on January 26, 2004. The subsequent motions for reconsideration did not toll the time for appealing from that order. See Commonwealth v. Cobb, 728 S.W.2d 540, 541 (Ky.App. 1987). Therefore, the time for appealing from the order denying the motion to amend the charge, as well as the orders denying the motions for reconsideration, had passed. Thus, Cooper's notice of appeal from these orders was untimely, and this court is without jurisdiction to consider the issues raised in this portion of his appeal. See Demoss v. Commonwealth, 765 S.W.2d 30, 32 (Ky.App. 1989).

The order denying Cooper's motion to recuse or disqualify was entered on June 1, 2004. He tendered his notice of appeal to the clerk on June 14, 2004, but it was not filed until July 15, 2004, because his motion to proceed in forma pauperis was not granted by the court until that time. The notice of appeal was timely as to this portion of the appeal. See CR 5.05(4).

Although the portion of Cooper's notice of appeal concerning the order denying his motion to recuse or disqualify was timely, it is without merit. At the time this motion was filed, the case was closed. Cooper had been convicted and sentenced, and the judgment had been affirmed on appeal. He had filed motions for relief under RCr 11.42 and CR 60.02. The orders denying those motions likewise had been affirmed on appeal. Furthermore, the order denying the motion to amend the charge had been entered, and no timely appeal had been taken from it. In short, the case was closed, the judgment was final, no appeals or motions were pending, and there was nothing pending before the court for hearing or ruling. Under these circumstances, there was nothing from which Judge Clymer could recuse.

The order of the McCracken Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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