

RENDERED: OCTOBER 3, 2008; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001208-MR

CHARLES CORBIT GAMBILL

APPELLANT

APPEAL FROM MAGOFFIN CIRCUIT COURT  
v. HONORABLE KIMBERLEY CORNETT CHILDERS, JUDGE  
ACTION NO. 04-CR-00110

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER  
DISMISSING

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BEFORE: KELLER AND TAYLOR, JUDGES; GUIDUGLI,<sup>1</sup> SENIOR JUDGE.

TAYLOR, JUDGE: Charles Corbit Gambill brings this *pro se* appeal from a

December 11, 2006, Order of the Magoffin Circuit Court denying his motions for

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<sup>1</sup> Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

default judgment, findings of fact, and to vacate an order dated July 26, 2006. We dismiss.

On October 4, 2005, appellant pleaded guilty to possession of a controlled substance in the first degree and received a probated sentence. Subsequently, the Commonwealth moved to revoke appellant's probation alleging that appellant failed drug tests and was consorting with known felons. Appellant stipulated to violating his probation in return for the Commonwealth's recommendation that appellant's probation not be revoked. In a July 26, 2006, order, the court extended appellant's probation for an additional year and ordered him to long-term drug rehabilitation.

On September 18, 2006, appellant filed a *pro se* motion to vacate the July 26, 2006, order pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42. When the Commonwealth failed to respond, appellant filed motions for default judgment and for findings of fact. On December 11, 2006, the court entered an order denying appellant's motions. Appellant then tendered a notice of appeal on January 8, 2007, but failed to attach the required filing fee. The circuit court clerk informed appellant that his notice of appeal would not be filed of record unless the fee was paid or waived. Some eighteen days later, on January 26, 2007, appellant filed a motion to proceed *in forma pauperis*. The motion to proceed *in*

*forma pauperis* was granted by the court on June 12, 2007, and the clerk entered the notice of appeal upon that date.

The time for filing a notice of appeal pursuant to Kentucky Rules of Civil Procedure (CR) 73.02(2) is both mandatory and subject to strict compliance. *Fox v. House*, 912 S.W.2d 450 (Ky.App. 1995). CR 73.02(1)(b) states if a notice of appeal is “timely tendered and accompanied by a motion to proceed in forma pauperis supported by an affidavit, a notice of appeal or cross-appeal shall be considered timely but shall not be filed until the motion to proceed in forma pauperis is granted.” In this case, appellant had until January 10, 2007, to timely file his notice of appeal. Although appellant tendered his notice of appeal within the appropriate time period, he did not timely tender a filing fee or a motion to proceed *in forma pauperis* as required by CR 73.02(1)(b). It was not until some sixteen days after the notice of appeal’s filing deadline of January 10, 2007, that appellant filed a motion to proceed *in forma pauperis*. In fact, appellant filed the motion to proceed *in forma pauperis* on January 26, 2007. As the motion to proceed *in forma pauperis* was untimely filed, appellant’s notice of appeal is considered “tendered” on that date and, likewise, is untimely. CR 73.02(1)(b). As such, dismissal of the instant appeal is mandated.

For the foregoing reasons, it is ORDERED that Appeal No. 2007-CA-001208-MR be and is hereby DISMISSED as untimely.

ALL CONCUR.

ENTERED: October 3, 2008

/s/ Jeff S. Taylor  
Judge, Court of Appeals

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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