

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

NO. 2013-CA-001037-MR

CLIFTON CHESTER

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT  
HONORABLE JOHN ATKINS, JUDGE  
ACTION NOS. 11-CR-00192 AND 11-CR-00312

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER  
DISMISSING

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BEFORE: CAPERTON, KRAMER,<sup>1</sup> AND STUMBO, JUDGES.

KRAMER, JUDGE: Clifton Chester appeals from the November 9, 2012 order of the Christian Circuit Court which denied his motion for Kentucky Rules of Criminal Procedure (RCr) 11.42 relief. Because we hold that Chester's appeal was untimely filed, and therefore outside this Court's jurisdiction, we order the appeal dismissed.

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<sup>1</sup> Judge Joy A. Kramer, formerly Judge Joy A. Moore.

On January 13, 2012, pursuant to a guilty plea, Chester was found guilty of first-degree trafficking in a controlled substance; second-degree trafficking in a controlled substance; and of being a first-degree persistent felony offender, and sentenced to a total of twenty years. On September 21, 2012, Chester filed a motion to vacate, set aside, or correct his sentence, pursuant to RCr 11.42, in which he argued that he had received ineffective assistance of counsel. Chester's motion was denied in an order entered on November 9, 2012.

On November 19, 2012, Chester tendered his notice of appeal of the November 9, 2012 order, but it was returned for failure to comply with necessary filing requirements, namely that he had failed to include an affidavit of indigency; an accounting of his inmate account; and a sufficient number of copies. The letter accompanying his returned documents further indicated that he must pay the filing fee if he did not wish to pursue *in forma pauperis* status. At some point, presumably concurrent to his notice of appeal, Chester also submitted a motion to proceed *in forma pauperis*.

On December 10, 2012, the trial court entered an order denying Chester's motion to proceed *in forma pauperis*. Chester subsequently appealed from that order. *See Chester v. Commonwealth*, 2013-CA-000141-MR (Ky.App. 2013). In an order entered on February 12, 2013, this Court vacated the trial court's December 10, 2012 order, and remanded for entry of a written order specifying why Chester was denied *in forma pauperis* status. *Id.* On remand, the

trial court issued a new order which found that Chester had sufficient funds to pay the filing fee and again denied his motion to proceed *in forma pauperis*. That order was entered on March 7, 2013. No further action was taken in the case until May 23, 2013, when Chester paid his filing fee and the notice of appeal from the November 9, 2012 order was filed.

The time requirements of filing a notice of appeal are clearly set forth in Kentucky Rules of Civil Procedure (CR) 73.02, which provides that a notice of appeal must be filed within thirty days after notation of service of the judgment or order. CR 73.02(1)(a). It is well established that “[c]ompliance with the time requirements of CR 73.02 is mandatory.” *Stinson v. Stinson*, 381 S.W.3d 333, 336 (Ky. App. 2012). In addition, a circuit court clerk shall not file a notice of appeal until the required filing fee is paid. CR 73.02(1)(b). However, the rules allow that a notice of appeal which is accompanied by a properly filed motion to proceed *in forma pauperis* shall be considered filed on the date of tender, if that motion is granted. CR 73.02(1)(b); CR 5.05(4). If the motion is denied, the moving party shall have thirty days to either pay the filing fee or to appeal the denial of *in forma pauperis* status. CR 73.02(1)(b); CR 5.05(4). “If the moving party fails to pay the required fees or costs, or to seek review, the matter shall be treated as though not timely filed.” CR 5.05.

In the case presently before us, Chester’s motion to proceed *in forma pauperis* was denied in an order entered on March 7, 2013. Chester’s filing fee was not received until more than two months later on May 23, 2013. In a note

accompanying his filing fee, dated May 6, 2013, Chester indicated that the trial court's March 7, 2013 order which required him to pay, did not indicate the amount to pay, nor the time in which it should be paid. Those requirements, however, are clearly set out in CR 76.42(2)(a)(i) and, as indicated above, in CR 73.02. Chester was required to pay his filing fee within thirty days of the March 7, 2013 order which denied his motion to proceed *in forma pauperis*. CR 73.02(1)(b). Because he did not pay the filing fee until more than a month and a half later, his notice of appeal was not timely filed and we are without jurisdiction to consider its merits. CR 73.02(1)(b); CR 5.05(4).

For the foregoing reasons, appeal number 2013-CA-001037-MR shall be, and is hereby ORDERED, dismissed.

ALL CONCUR.

December 5, 2014  
ENTERED  
BRIEFS FOR APPELLANT:

Christine Foster  
Frankfort, Kentucky

/s/ Joy A. Kramer  
JUDGE, COURT OF APPEALS  
BRIEF FOR APPELLEE:

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