

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-001143-MR

JERRY JONES

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE CHARLES L. CUNNINGHAM, JR., JUDGE  
ACTION NO. 11-CR-001401

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER  
DISMISSING APPEAL

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BEFORE: CLAYTON, COMBS, AND STUMBO, JUDGES.

CLAYTON, JUDGE: This is an appeal from a decision of the Jefferson Circuit Court dismissing the Appellant's case without prejudice. Because we lack jurisdiction over the appeal, we dismiss it.

OPINION

Appellant, Jerry Jones, was arrested on February 6, 2011, and was subsequently indicted for Trafficking in a Controlled Substance in the First

Degree, Cocaine; Tampering with Physical Evidence; and Possession of Marijuana. On September 22, 2011, counsel for Jones requested the trial court allow him to perform DNA testing on evidence the Commonwealth asserted had been removed from Jones's person by a police officer. The trial court allowed Jones to have the "touch DNA" testing he requested, but at his own expense.

On October 24, 2011, counsel for Jones asked the trial court to require the Commonwealth to compare the DNA test results with those of persons on the Combined DNA Index System (CODIS) database. On December 18, 2012, the Commonwealth made an oral motion to dismiss the charges against Jones without prejudice.

On January 7, 2013, Jones filed a motion requesting a hearing under Kentucky Rules of Criminal Procedure (RCr) 9.64 and Kentucky Rules of Civil Procedure (CR) 59.05. On March 12, 2013, the trial court held a hearing on the issue of the dismissal without prejudice. At the March 12 hearing, Jones's attorney argued that he should either be granted a dismissal with prejudice, or a trial. The Commonwealth, however, would not agree to a dismissal with prejudice and the trial court indicated that it would sign a tendered order dismissing the case without prejudice. There is not, however, an Order of Dismissal in the record dated March 12, 2013. While such an order is referenced in the trial court's denial of Jones's CR 59.05 motion on June 7, 2013, the only Order of Dismissal in the record was entered by the trial court on July 2, 2013.

On March 20, 2013, Jones filed a second Motion for Speedy Trial and a Motion to Alter, Amend or Vacate the order of dismissal. As set forth above, however, there was no March 12, 2013 order of dismissal which could have been altered, amended or vacated.

On June 28, 2013, counsel for Jones filed a Notice of Appeal to our court. The Notice of Appeal set forth that it was an appeal from a “signed but undated Order of Dismissal of the Jefferson Circuit Court, Division Four (4) that was verbally entered on or about March 13, 2013” and his “Order Denying CR 59.05 Relief” which was entered on June 7, 2013.

CR 58 provides that “[t]he signing . . . is not the act that makes the judgment or order effective. The notation by the clerk in the ‘docket’ . . . is the final step which constitutes the entry of the order or judgment.” *Commonwealth v. West*, 147 S.W.3d 72, 74 (Ky. App. 2004), *citing* 7 Kurt A. Phillips, Jr., *Kentucky Practice*, CR 58, cmt. 3 (5<sup>th</sup> ed. 1995). Thus, the signed but undated Order of Dismissal from which this appeal was taken was not final until July 2, 2013, which was after the Notice of Appeal had been filed.

RCr 12.04(3) provides that “[t]he time within which an appeal may be taken shall be thirty (30) days after the date of entry of the judgment or order from which it is taken . . . .” Since RCr 12.06(2) provides that the date of entry is the date of notation by the clerk and since the notation on the Order of Dismissal was not until after the Notice of Appeal was filed, we do not have jurisdiction over this appeal. Consequently, Appeal No. 2013-CA-001143-MR is DISMISSED.

ALL CONCUR.

ENTERED: April 17, 2015

/s/ Denise G. Clayton  
JUDGE, COURT OF APPEALS

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