

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

MICHAEL JAMES HNATUSKO,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1284 MDA 2012

Appeal from the Judgment of Sentence entered May 21, 2012
In the Court of Common Pleas of Lackawanna County
Criminal Division at No(s): CP-35-CR-0002021-2011

BEFORE: MUNDY, OLSON and STRASSBURGER,* JJ.

MEMORANDUM BY OLSON, J.:

Filed: March 7, 2013

Appellant, Michael James Hnatusko, appeals *pro se* from the judgment of sentence entered on May 21, 2012. We quash this appeal.

Appellant pleaded guilty to simple assault¹ and, on May 21, 2012, the trial court sentenced Appellant to time-served and ordered that Appellant participate in a county intermediate punishment program ("IPP"). The IPP required that Appellant participate "in drug or alcohol screening and treatment programs, including outpatient and inpatient programs." **See** Sentence Sheet, 5/21/12, at 1; Commitment Form, 5/22/12, at 1-4.

On July 11, 2012, the Lackawanna County Clerk of Courts docketed Appellant's hand-written, *pro se* "Notice of Appeal," in which Appellant

¹ 18 Pa.C.S.A. § 2701(a)(1).

purported to appeal from the May 21, 2012 judgment of sentence. On the notice of appeal, Appellant hand-wrote that he “verified” the notice of appeal on May 29, 2012. Notice of Appeal, 7/11/12, at 3.

Since Appellant’s notice of appeal was manifestly untimely, the Commonwealth filed a motion to quash the appeal. After receiving Appellant’s answer – in which Appellant simply claimed that he “mailed” the notice of appeal on May 29, 2012 – we denied the Commonwealth’s motion without prejudice. Order, 9/12/12, at 1. We now quash this appeal.

On appeal, the Commonwealth again claims that Appellant’s notice of appeal is untimely and that the appeal must, therefore, be quashed. We note that, even if the Commonwealth had not raised the issue of untimeliness, “we [would have been] required to consider the [timeliness of this appeal] *sua sponte* because the issue [implicates] our subject matter jurisdiction.” ***Commonwealth v. Cooper***, 710 A.2d 76, 78 (Pa. Super. 1998).

The timeliness of this appeal is governed by Pennsylvania Rule of Appellate Procedure 903(a). Rule 903(a) demands that a notice of appeal “be **filed** within 30 days after the entry of the order from which the appeal is taken.” Pa.R.A.P. 903(a) (emphasis added). This “[t]ime limitation[] on the taking of appeals [is] strictly construed and cannot be extended as a matter of grace.” ***Commonwealth v. Perez***, 799 A.2d 848, 851 (Pa. Super. 2002). Further, as Pennsylvania Rule of Appellate Procedure 902 makes

clear, the validity of the appeal is wholly dependent upon the date the notice of appeal is “filed . . . with the clerk of the lower court.” Rule 902 states:

An appeal permitted by law as of right from a lower court to an appellate court shall be taken by filing a notice of appeal with the clerk of the lower court within the time allowed by Rule 903 (time for appeal). Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but it is subject to such action as the appellate court deems appropriate, which may include, but is not limited to, remand of the matter to the lower court so that the omitted procedural step may be taken.

Pa.R.A.P. 902.

In Pennsylvania, the requirement of a timely-filed notice of appeal is subject to the prisoner mailbox rule. This rule provides that “a *pro se* prisoner’s appeal will be deemed to be filed when the inmate places the document in the hands of prison officials or in the prison mailbox.” ***Smith v. Pa. Bd. of Prob. & Parole***, 683 A.2d 278, 279 (Pa. 1996). In the case at bar, however, Appellant was given a time-served sentence and, thus, Appellant was not in prison when (he claims) he mailed his notice of appeal. Therefore, Appellant is not entitled to invoke the prisoner mailbox rule, as Appellant was able to “monitor the processing of [his] notice[] of appeal and [] ensure that the court clerk receive[d] and stamp[ed his] notice[] of appeal before the 30-day deadline.” ***Commonwealth v. Jones***, 700 A.2d 423, 425 (Pa. 1997).

Since the prisoner mailbox rule does not apply and since Appellant filed his notice of appeal in a manifestly untimely manner, we lack subject matter jurisdiction over this appeal. We must quash this appeal.

Appeal quashed.