

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ERIC ANTHONY GOLDBERG

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1390 WDA 2013

Appeal from the Order Dated June 27, 2013  
In the Court of Common Pleas of Allegheny County  
Criminal Division at No(s): CP-02-CR-0015060-2012

BEFORE: PANELLA, J., JENKINS, J., and MUSMANNO, J.

JUDGMENT ORDER BY JENKINS, J.:

**FILED JULY 22, 2014**

Eric Anthony Goldberg ("Goldberg") appeals from the order entered in the court of Common Pleas of Allegheny County on June 27, 2013. Because we lack jurisdiction to entertain his appeal, we quash.

On June 25, 2013, Goldberg attempted to enter a counseled, negotiated guilty plea. Because Goldberg indicated he did not fully understand the terms of the plea and his post-sentencing rights, the trial court did not accept the plea and ordered a drug test. **See** Appellant's Brief at 6; Appellee's Brief at 2. After the drug test results showed that Goldberg was not under the influence of drugs, the plea proceedings were rescheduled. On June 27, 2013, the parties reconvened and Goldberg entered a negotiated guilty plea to one count each of simple assault, recklessly endangering another person, criminal mischief and careless

driving.<sup>1</sup> That same day, the trial court sentenced Goldberg in open court to five years of probation with the conditions that he undergo random drug screens, a mental health evaluation and a drug and alcohol evaluation, complete anger management classes, and refrain from any violent contact with the victim. Trial Court Opinion, 12/10/2013 (“Opinion”), at 2; Notes of Trial, 6/27/2013 (“N.T.”), at 3, 10.<sup>2</sup> The Department of Court Records entered the judgment of sentence on the docket the same day. Goldberg did not file post-trial motions. On July 31, 2013, Goldberg filed a Notice of Appeal to this Court.

Pennsylvania Rule of Appellate Procedure 903(a) requires that a litigant wishing to appeal a trial court’s final order must file the Notice of Appeal “within 30 days after the entry of the order from which the appeal is taken.” Pa.R.A.P. 903(a). For criminal cases, if no post-sentence motions are filed, the Notice of Appeal “shall be filed within 30 days of the imposition of the judgment of sentence in open court.” Pa.R.A.P. 903(c)(3).

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<sup>1</sup> 18 Pa.C.S. §§ 2701(a)(1), 2705, 3304(a)(2); 75 Pa.C.S. 3714(a), respectively. We note that the Commonwealth originally charged Goldberg with one count each of aggravated assault, simple assault, recklessly endangering another person, criminal mischief, reckless driving, careless driving, stalking, harassment, and front windshield obstruction. In exchange for Goldberg’s guilty plea under the terms described above, the Commonwealth withdrew the remaining counts.

<sup>2</sup> The order imposing the judgment of sentence was filed the same day.

The question of timeliness of an appeal is jurisdictional. **Commonwealth v. Moir**, 766 A.2d 1253, 1254 (Pa.Super.2000). “This Court is without jurisdiction to excuse a failure to file a timely notice, as the 30-day period must be strictly construed.” **Valley Forge Ctr. Associates v. Rib-It/K.P., Inc.**, 693 A.2d 242, 245 (Pa.Super.1997) (citing **In re Greist**, 636 A.2d 193, 195 (1994)). **See also Commonwealth v. Riebow**, 445 A.2d 1219, 1220 (Pa.Super.1982) (providing this Court “is required to construe strictly the thirty day limitation”). “An untimely appeal divests this Court of jurisdiction.” **Valley Forge**, 693 A.2d at 245.

Goldberg attempts to appeal the trial court’s judgment of sentence. He did not file any post-sentence motions. Accordingly, because the trial court imposed Goldberg’s judgment of sentence in open court on June 27, 2013, Pennsylvania Rule of Appellate Procedure 903(c)(3) required him to file his Notice of Appeal by July 29, 2013. **See** Pa.R.A.P. 903(c)(3).<sup>3</sup> Goldberg filed his Notice of Appeal on July 31, 2013, two days late.

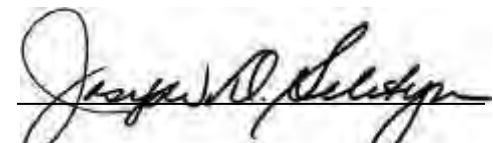
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<sup>3</sup> For purposes of calculating the last day on which a Notice of Appeal must be filed, the computation of time requires omission of the last day of a time period which falls on Saturday, Sunday, or legal holiday. **See** Note to Pa.R.A.P. 903; Pa.R.A.P. 107 (incorporating by reference the Pennsylvania rules of construction); 1 Pa.C.S. § 1908 (relating to computation of time for the rule of construction). The last day of Goldberg’s time period to file a Notice of Appeal fell on July 27, 2013, which was a Saturday. The adjusted last day became Monday, July 29, 2013, the next business day.

Goldberg notes that the notice was “post-marked” July 29, 2013. Appellant’s Brief at 7. On July 29, 2013, he was not incarcerated and thus had the ability to personally travel to the courthouse to ensure his Notice of Appeal was timely filed.<sup>4</sup> Because Goldberg did not file a timely appeal from the June 27, 2013 order, we are without jurisdiction to entertain the appeal. **See Moir**, 766 A.2d at 1254-55. **See also Bronson v. Kerestes**, 40 A.3d 1253, 1255 (Pa.Super.2012) (“[q]uashal is usually appropriate where . . . the appeal was untimely . . . .”) (internal citations and quotations omitted).

Appeal **quashed**.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/22/2014

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<sup>4</sup> **Compare Commonwealth v. Jones**, 700 A.2d 423, 425 (Pa.1997) (providing appellants who are incarcerated may avail themselves of the prisoner mailbox rule).