

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellant

v.

SEAN M. MCDONOUGH

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 473 WDA 2013

Appeal from the Order February 25, 2013
In the Court of Common Pleas of Lawrence County
Criminal Division at No(s): CP-37-CR-0000110-2011

BEFORE: PANELLA, J., DONOHUE, J., and ALLEN, J.

JUDGMENT ORDER BY PANELLA, J.

FILED JULY 17, 2014

The Commonwealth of Pennsylvania purports to appeal from an order denying its motion for reconsideration, entered on February 25, 2013, of an order granting partial *habeas corpus* relief, concerning two counts of rape, entered on January 15, 2013. As the appeal is patently untimely, we quash for lack of jurisdiction.

The order granting McDonough *habes corpus* relief was entered on the docket on January 15, 2013, with notice provided to the parties. Forty-one days later, on February 25, 2013, the Commonwealth filed a motion for reconsideration, which the trial court reviewed and denied. Thereafter, on March 13, 2013, fifty-seven days after the original order became final, the Commonwealth filed a notice of appeal to this Court. The Commonwealth's notice of Appeal states the following:

The Lawrence County District Attorney, hereby appeals to the Superior Court of Pennsylvania from an Order entered by the Court of Common Pleas in the Matter on the 25th day of February, 2013. The February Order was issued upon Motion for Reconsideration of an original order entered on the 14th day of January, 2013.

Notice of Appeal, 3/13/2013.

“The question of timeliness of an appeal is jurisdictional.” ***Commonwealth v. Moir***, 766 A.2d 1253, 1254 (Pa. Super. 2000) (citation omitted). An interlocutory order is appealable pursuant to Rule 311(d) of the Pennsylvania Rules of Appellate Procedure. An appeal is considered timely filed where it is filed within 30 days after entry of the order on the docket. ***See*** Pa.R.A.P. 903(a); ***Moir***, 766 A.2d at 1254. Rule 301(a) of the Rules of Appellate Procedure further provides that “no order of a court shall be appealable until it has been entered upon the appropriate docket in the lower court.” Pa.R.A.P. 301(a). “[T]he day of entry shall be the day the clerk of the court or the office of the government unit mails or delivers copies of the order to the parties....” Pa.R.A.P. 108(a)(1). ***See also*** Pa.R.A.P. 108(d)(1).

Following the conclusion of this 30-day period, “[t]his Court is without jurisdiction to excuse a failure to file a timely notice, as the 30-day period must be strictly construed. Further, we note that an untimely appeal divests this Court of jurisdiction.” ***Valley Forge Center Associates v. Rib-It/K.P., Inc.***, 693 A.2d 242, 245 (Pa. Super 1997).

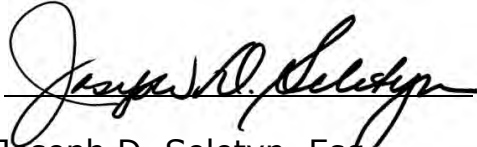
As for reconsideration, “the trial court must expressly grant” that “*within thirty days of entry of its order*. Failure to ‘expressly’ grant reconsideration *within the time set by the rules for filing an appeal* will cause the trial court to lose its power to act on the application for reconsideration.” ***Moir***, 766 A.2d at 1254 (citations omitted; emphasis added). ***See also Stockton v. Stockton***, 698 A.2d 1334, 1337 (Pa. Super 1997). “Moreover, we have consistently held that an appeal from an order denying reconsideration is improper and untimely.” ***Moir***, 766 A.2d at 1254 (citation omitted).

Here, the appealable order is the order granting *habeas corpus* relief. That order became appealable on January 15, 2013. The notice of appeal, however, was not filed until fifty-seven days after the order became final. As this was twenty-seven days past the 30-day threshold, both the trial court and this Court were divested of jurisdiction. Moreover, the motion for reconsideration was also untimely; it was filed eleven days past the 30-day threshold. Therefore, the trial court had no power to act on the motion.

It would appear, based on the Commonwealth’s statements in its notice of appeal, that it believed it could appeal from the denial of the motion for reconsideration. This is simply an incorrect procedure. As the Commonwealth has not filed a notice of appeal in a timely fashion, this Court has no jurisdiction. Therefore, we have no choice but to quash the appeal.

Appeal quashed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/17/2014