

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

DOYLE WAYNE KENT

Appellant

No. 309 EDA 2013

Appeal from the PCRA Order January 10, 2013
In the Court of Common Pleas of Montgomery County
Criminal Division at No(s): CP-46-CR-0008412-2010

BEFORE: BOWES, J., PANELLA, J., and FITZGERALD, J.*

DISSENTING MEMORANDUM BY BOWES, J.: **FILED DECEMBER 18, 2013**

As I conclude that the present appeal was untimely filed, I would quash and respectfully dissent from the majority's disposition of this appeal.

Appellant was charged with robbery, aggravated assault, burglary, possession of an instrument of crime, theft, terroristic threats, reckless endangerment, simple assault, trespass, and receiving stolen property in connection with the following events. At approximately 3:00 a.m. on October 13, 2010, bartender Steve Pavelick was closing St. Gabes Lodge on

* Former Justice specially assigned to the Superior Court.

Jefferson Street in Stowe, Pennsylvania. He went to the basement when he was confronted by Appellant, who was holding a knife. Appellant confirmed that Mr. Pavelick was alone and asked where the money was located. After Mr. Pavelick responded that the money was upstairs, Appellant placed the blade of his knife to Mr. Pavelick's neck and told him to take him to it. Appellant also threatened to cut the victim's throat if anyone else was present. Appellant forced Mr. Pavelick to place the cash on hand, \$3,915, in a bag, and told Mr. Pavelick that, if he telephoned police and Appellant went to jail, Appellant's friends would find the victim.

On August 22, 2011, Appellant entered a negotiated guilty plea to robbery graded as a first-degree felony, and the agreed-upon sentence of six to twelve years imprisonment was imposed that day. On July 11, 2012, Appellant filed a *pro se* PCRA petition, and counsel was appointed. On October 22, 2012, counsel filed a no-merit letter and petition to withdraw. On October 24, 2012, after an independent review of the record and concurrence in counsel's conclusion that the PCRA petition lacked merit, the PCRA court granted counsel's petition. On November 14, 2012, the court entered an order dismissing the PCRA petition and informing Appellant that he had thirty days to appeal the dismissal. A copy of the dismissal order was sent to Appellant in prison.

Although the certified record contains no document asking for such relief, on December 12, 2012, the trial court entered an order granting Appellant's "request for an extension of time," and, in the order, the court purported to grant Appellant a thirty-day extension of time within which to appeal the November 14, 2012 order dismissing the PCRA petition. Order of Court, 12/12/12, at 1. Appellant mailed his notice of appeal from prison on January 10, 2013.

A notice of appeal "shall be filed within 30 days after the entry of the order from which the appeal is taken." Pa.R.A.P. 903(a). While the rules of appellate procedure can be liberally construed, such construction is inapplicable to appeal periods. Pa.R.A.P. 105(b) ("the court may not enlarge the time for filing a notice of appeal . . ."); ***see also Singer v. Delaware, L. & W. R. Co.***, 98 A. 1059, 1060 (Pa. 1916) (court cannot extend the time for taking an appeal as set forth in a statute).

In my view, the trial court lacked authority to accord Appellant sixty days to file the present appeal. Furthermore, there were no extenuating circumstances, such as fraud or a breakdown in the court's operations, warranting an enlargement of the appeal period. Appellant was able to petition the court for relief within the thirty-day appeal period, and there is no reason why he simply did not file the notice of appeal itself. Accordingly, I would quash the present appeal.