

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

COREY MCCULLOUGH,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 790 MDA 2012

Appeal from the Judgment of Sentence of January 27, 2012,
in the Court of Common Pleas of Lackawanna County,
Criminal Division at No. CP-35-CR-0003154-2010

BEFORE: SHOGAN, OTT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

Filed: March 14, 2013

We quash this direct appeal from judgment of sentence.

Generally, a direct appeal in a criminal case must be filed within thirty days of sentencing in the absence of a timely post-sentence motion. Pa.R.A.P. 903(c)(3). To be timely, a post-sentence motion must normally be filed within ten days of sentencing. Pa.R.Crim.P. 720(A)(1). If a timely post-sentence motion is filed by the defendant, an appeal by the defendant must be taken within thirty days after the entry of the order denying the motion. Pa.R.Crim.P. 720(A)(2).

* Retired Senior Judge assigned to the Superior Court.

An untimely post-sentence motion does not toll the thirty-day-after-sentencing appeal period. ***Commonwealth v. Wrecks***, 934 A.2d 1287, 1289 (Pa. Super. 2007). Thus, the mere fact that a trial court rules on a late post-sentence motion does not somehow render that motion timely and, likewise, does not extend the appeal period. ***Commonwealth v. Dreves***, 839 A.2d 1122, 1126-29 (Pa. Super. 2003). Rather, in the case of a late post-sentence motion, the defendant's time for filing an appeal runs from sentencing. ***Commonwealth v. Millisock***, 873 A.2d 748, 750 (Pa. Super. 2005). If an appeal is taken after the filing period expires, we lack jurisdiction to address the merits of that appeal. ***Wrecks***, 934 A.2d at 1289. Lacking jurisdiction to address its merits, we will quash it. ***Id.*** Moreover, this Court will raise and resolve the issue of timeliness and jurisdiction *sua sponte*, as we do in this case. ***Commonwealth v. Hutchins***, 760 A.2d 50, 53 (Pa. Super. 2000).

This Court relies on facts only if they are in the certified record. ***Commonwealth v. Rush***, 959 A.2d 945, 949 (Pa. Super. 2008). We do not rely on assertions in the appellate briefs or in the trial court's opinion. ***Id.*** It is the appellant's duty to ensure that the certified record contains all the facts and documents necessary for appellate review. ***Id.***

In the present matter, the trial court sentenced Appellant on January 27, 2012. As of that date, Appellant's direct appeal deadline was February

27, 2012.¹ In his brief, Appellant claims, without citation to the record, that he filed a timely post-sentence motion. The Commonwealth has not commented on the timeliness of any such motion or this appeal in general. The trial court's opinion indicates Appellant filed "various post-sentence motions which were denied" and does not make any representation as to whether those motions were timely. Trial Court Opinion, 11/30/12, at 1. With or without any claims that the post-sentence motions were timely, the foregoing assertions from Appellant and the court do not constitute facts upon which we are allowed to rely.

The trial court docket does not reflect the filing of any post-sentence motions, whether timely or not. No post-sentence motions are in the certified record. There is no basis to conclude that Appellant filed a post-sentence motion extending his appeal deadline beyond February 27, 2012.

The trial court entered an order purporting to deny a motion for reconsideration of sentence on March 22, 2012, and Appellant filed this appeal within thirty days thereafter—more particularly, on April 19, 2012. However, because the certified record does not demonstrate that a post-sentence motion was filed within ten days of sentencing on January 27, 2012, the court's order cannot be the triggering event for Appellant's thirty-

¹ The appeal period would have expired on February 26, 2012, but that date was a Sunday. **See** 1 Pa.C.S.A. § 1908 (discussing computation of time); Pa.R.A.P. 107; Pa.R.Crim.P 101(C).

day appeal period. Instead, his thirty-day appeal period ran from the date of sentencing and, consequently, expired on February 27, 2012.

Having been filed beyond the appeal deadline, this appeal is untimely. We lack jurisdiction to entertain its merits. We quash this matter.

Appeal quashed.