

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

MAURICE F. FOLEY

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 904 WDA 2012

Appeal from the Order of April 20, 2012  
In the Court of Common Pleas of Erie County  
Criminal Division at No(s): CP-25-CR-0000193-1992  
CP-25-CR-0000194-1992  
CP-25-CR-0000195-1992  
CP-25-CR-0000196-1992  
CP-25-CR-0000339-1992  
CP-25-CR-0001127-1992

BEFORE: ALLEN, J., WECHT, J., and STRASSBURGER, J.\*

MEMORANDUM BY WECHT, J.:

**FILED SEPTEMBER 3, 2013**

Maurice Foley ("Appellant") purports to appeal either the trial court's final April 20, 2012 order denying his petition for a writ of *coram nobis*, or the court's May 21, 2012 order denying Appellant's May 4, 2012 motion for reconsideration of that order. **See** Notice of Appeal, May 29, 2012 ("NOTICE IS HEREBY GIVEN concerning my request to appeal the Court's Order of April 20, 2012, denying me Coram Nobis relief, and further denying reconsideration (Order of May 21, 2012)."). We must quash Appellant's

---

\* Retired Senior Judge assigned to the Superior Court.

appeal for want of jurisdiction, because we find that the appeal was not filed within the relevant time limits.

Pursuant to Pa.R.A.P. 903(a), “the notice of appeal . . . shall be filed within 30 days after the entry of the order from which the appeal is taken.” **See Commonwealth v. Moir**, 766 A.2d 1253, 1254 (Pa. Super. 2000). “The question of timeliness of an appeal is jurisdictional.” **Id.** (citing **Lee v. Guerin**, 735 A.2d 1280, 1281 (Pa. Super. 1999)). “[W]e have consistently held that an appeal from an order denying reconsideration is improper and untimely.” **Moir**, 766 A.2d at 1254 (citation omitted). Thus, we have held:

“[A]s the comment to Pa.R.A.P. 1701 explains, although a party may petition the court for reconsideration, the simultaneous filing of a notice of appeal is necessary to preserve appellate rights in the event that either the trial court fails to grant the petition expressly within 30 days, or it denies the petition.” **Valley Forge Center v. Rib It/K.P., Inc.**, 693 A.2d 242, 245 (Pa. Super. 1997).

**Moir**, 766 A.2d at 1254 (citation modified).

As noted, it is unclear which of the aforementioned orders that Appellant intended to appeal. However, under the circumstances of this case, the difference is of no moment. Regardless of how Appellant styled his appeal, the only order from which his appeal would lie was the April 20, 2012 order denying Appellant’s petition for a writ of *coram nobis*. **Moir**, *supra*. Thus, under Rule 903(a), Appellant’s appeal must have been filed on or before May 21, 2012. His notice of appeal was docketed by the court of

common pleas on May 29, 2012, eight days beyond the jurisdictional time limit.

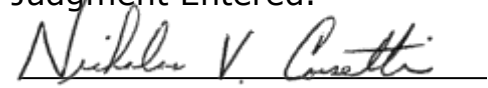
However, this does not end our inquiry. Appellant currently is incarcerated in a federal penitentiary. Consequently, he is entitled to the benefit of the "prisoner mailbox rule," pursuant to which a prisoner's notice of appeal will be deemed filed "as of the date he or she delivers it to the prison authorities for mailing." ***Commonwealth v. Jones***, 700 A.2d 423, 425 (Pa. 1997); ***accord Smith v. Penna. Bd. of Probation & Parole***, 683 A.2d 278, 281-82 (Pa. 1996). However, as ***Smith*** notes, the appellant bears the burden of demonstrating at least substantial compliance with the prisoner mailbox rule. 683 A.2d at 282.

Our review of the record discloses no conclusive evidence that Appellant deposited his notice of appeal in a prison mailbox, or placed it in the hands of prison authorities for mailing, on or before May 21, 2012. Appellant's notice of appeal is undated, does not contain a dated certificate of service, and lacks any other documentation which would indicate that the appeal was timely. Consequently, Appellant failed to establish this Court's jurisdiction, and we are precluded from addressing the merits of his appeal.

Appeal quashed. Appellant's "Motion for Post-Submission Communication Pursuant to Pa. R.A.P. 2501(A)" is denied as moot.

J-S10017-13

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casatti", is written over a horizontal line.

Deputy Prothonotary

Date: 9/3/2013