

IN THE UTAH COURT OF APPEALS

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| State of Utah,           | ) | MEMORANDUM DECISION  |
|                          | ) | (Not For Official Publication)   |
| Plaintiff and Appellee,  | ) |  |
|                          | ) | Case No. 20070524-CA   |
| v.                       | ) | Case No. 20070551-CA   |
|                          | ) |  |
| David C. Coleman,        | ) | F I L E D  |
|                          | ) | (February 22, 2008)  |
|                          | ) |  |
| Defendant and Appellant. | ) | <span style="border: 1px solid black; padding: 2px;">2008 UT App 50</span> |

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Second District, Ogden Department, 061901662, 061901663  
The Honorable Roger S. Dutson

Attorneys: Randall W. Richards, Ogden, for Appellant  
Mark L. Shurtleff and Kris C. Leonard, Salt Lake  
City, for Appellee

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Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Appellant David C. Coleman appeals his conviction of attempted aggravated arson, a second degree felony, in case number 20070524-CA, and his conviction of assault with substantial bodily injury, a class A misdemeanor, in case number 20070551-CA. This case is before the court on sua sponte motions for summary disposition. We consolidate the appeals for purposes of this decision.

The district court signed and entered a judgment, sentence, and commitment in Coleman's cases on March 14, 2007. On May 24, 2007, the Utah Court of Appeals received a pro se notice of appeal and a letter requesting an extension of the appeal time in each case. This court forwarded the notice of appeal to the Second District Court, where it was filed in each case on June 20. We advised Coleman that only the district court may grant an extension of the time for appeal. See Utah R. App. P. 4(e). In response to Coleman's request for appointed counsel, we temporarily remanded the cases to the district court for determination of indigency and appointment of counsel if appropriate. Following the district court's appointment of appellate counsel, we issued a sua sponte motion for summary

disposition based upon lack of jurisdiction. Coleman's counsel did not file a response.

"In a criminal case, it is the sentence itself which constitutes a final judgment from which appellant has the right to appeal." State v. Bowers, 2002 UT 100, ¶ 4, 57 P.3d 1065. The district court entered the judgment and sentence in each case on March 14, 2007. The time for appeal expired on April 13, 2007. Coleman incorrectly filed a notice of appeal directly in this court on May 24, which was seventy-one days after the entry of the final appealable judgment. Although the notice of appeal was accompanied by a request for an extension of the appeal time, that request was both untimely and filed in the incorrect court. See Utah R. App. P. 4(e). An extension of the appeal time must be filed in the trial court no later than thirty days after the expiration of the original appeal time. See id. Accordingly, the time for filing a motion to extend the appeal time expired on May 14, 2007. The notice of appeal forwarded by this court was filed in the district court on June 20, 2007.

Because Coleman's notice of appeal was untimely, we lack jurisdiction to hear the appeal. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶ 7, 13 P.3d 616. Our dismissal is without prejudice to a motion filed in the district court pursuant to Manning v. State, 2005 UT 61, 122 P.3d 628.

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge