

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060935-CA
v.)	
)	F I L E D
Russ Harry,)	(December 14, 2006)
)	
Defendant and Appellant.)	2006 UT App 505

Third District, Salt Lake Department, 051908113
The Honorable Deno Himonas

Attorneys: Russ Harry, Salt Lake City, Appellant Pro Se
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Bench, Greenwood, and Thorne.

PER CURIAM:

On September 12, 2006, a jury found Defendant guilty of driving under the influence of alcohol and drugs, a class B misdemeanor, and illegal possession of a controlled substance, a third degree felony. Sentencing was set for December 15, 2006. Harry filed a pro se notice of appeal seeking to appeal a judgment, which he claims was entered on September 12, 2006, finding him guilty of possession of a controlled substance.

"In a criminal case, it is 'the sentence itself which constitutes the final judgment from which the appellant has the right to appeal.'" State v. Bowers, 2002 UT 100, ¶4, 57 P.3d 1065 (quoting State v. Gerrard, 584 P.2d 885, 886 (Utah 1978)). Harry had not been sentenced when he filed the notice of appeal; therefore, the district court had not entered a final, appealable judgment. Accordingly, we lack jurisdiction to consider the appeal. Once a court determines that it lacks jurisdiction, it retains only the authority to dismiss the action. See Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989).

We dismiss the appeal, without prejudice to a timely appeal filed after the entry of a final judgment and sentence.

Russell W. Bench,
Presiding Judge

Pamela T. Greenwood,
Associate Presiding Judge

William A. Thorne Jr., Judge