

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION	
	)	(Not For Official Publication)	
Plaintiff and Appellee,	)		
	)	Case No. 20080348-CA	
v.	)		
	)	F I L E D	
Robert Steven Hatch,	)	(March 26, 2009)	
	)		
Defendant and Appellant.	)	<table border="1"><tr><td>2009 UT App 82</td></tr></table>	2009 UT App 82
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Fourth District, Provo Department, 021403391  
The Honorable Steven L. Hansen

Attorneys: Jose Silva, Orem, for Appellant  
Mark L. Shurtleff and Jeffrey S. Gray, Salt Lake  
City, for Appellee

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Before Judges Greenwood, Orme, and Davis.

PER CURIAM:

Robert Steven Hatch appeals the district court's order denying his motion for a new trial entered on April 14, 2008. This matter is before the court on a motion for summary disposition based on the ground that the notice of appeal was not timely filed. We dismiss the appeal.

Pursuant to rule 4(a) of the Utah Rules of Appellate Procedure, a notice of appeal must be filed within thirty days of the entry of the final order or judgment appealed. See Utah R. App. P. 4(a). If a notice of appeal is not timely filed, this court lacks jurisdiction to consider the appeal. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶ 7, 13 P.3d 616.

Rule 4(b)(1) provides that if a timely motion for a new trial is filed, pursuant to rule 24 of the Utah Rules of Criminal Procedure, the time for a party to file a notice of appeal runs from the entry of the order disposing of the motion for a new trial. See Utah R. App. P. 4(b)(1). Rule 24(c) of the Utah Rules of Criminal Procedure requires that a motion for a new trial be filed within ten days after imposition of the sentence. See Utah R. Crim. P. 24(c). Rule 24(c) also provides that the district court may extend the time for filing a motion for a new

trial so long as a motion seeking an extension to file the motion for a new trial is filed within ten-days after sentencing. See id. Rule 2(b)(2) of the Utah Rules of Criminal Procedure specifically precludes the district court from extending the time period for seeking a new trial on a motion made after expiration of the original ten day period. See id. R. 2(b)(2).

Hatch asserts that a motion for an extension of time to file his motion for a new trial was made during sentencing. However, the record on appeal does not support Hatch's assertion that he obtained an extension of time to file the motion for a new trial within ten days after sentencing.<sup>1</sup> Furthermore, Hatch did not provide this court with a transcript of the sentencing hearing. Rule 11(c) of the Utah Rules of Appellate Procedure requires an appellant to provide this court with all evidence relevant to his or her appeal. See Utah R. App. P. 11(c).

The record on appeal indicates that there was no request for an extension of time to file a motion for a new trial until May 25, 2004. Sentencing was held on March 5, 2004. Because there is no evidence in the record that the motion for a new trial was timely filed, we cannot say that the motion was timely filed or that it tolled the time period to file a notice of appeal. See Burgers v. Maiben, 652 P.2d 1320, 1321 (Utah 1982). Thus, the notice of appeal was untimely. Therefore, this court lacks jurisdiction over the appeal and has only the authority to dismiss it. See Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989).

Accordingly, we dismiss the appeal for lack of jurisdiction.

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Pamela T. Greenwood,  
Presiding Judge

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Gregory K. Orme, Judge

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James Z. Davis, Judge

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1. Hatch also asserts that his sentencing was not complete until remaining issues regarding restitution had been resolved on February 22, 2005. However, "[p]ending issues regarding restitution do not suspend the time for appeal." State v. Asqia Ji Hanigan, 2002 UT App 424U, para. 7 (mem.) (per curiam); see also State v. Gerrard, 584 P.2d 885, 886 (Utah 1978).