

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20040351-CA
v.)	
)	F I L E D
Terry James Marble,)	(August 11, 2005)
)	
Defendant and Appellant.)	2005 UT App 350

First District, Brigham City Department, 031100027
The Honorable Ben H. Hadfield

Attorneys: Dee W. Smith, Ogden, for Appellant
 Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake
 City, for Appellee

Before Judges Davis, Orme, and Thorne.

PER CURIAM:

Terry James Marble appeals his conviction on four counts of aggravated sexual abuse of a child, a first degree felony. This case is before the court on the State's motion to dismiss the appeal for lack of jurisdiction.

The district court orally announced Marble's sentence on October 15, 2003. On October 22, Marble filed a motion for new trial. The district court did not enter its written sentencing order until October 28, 2003. On April 8, 2004, the district court entered its order denying the motion for new trial. The court held the motion for new trial was timely under rule 24 of the Utah Rules of Criminal Procedure, but denied the motion on its merits. Marble filed a notice of appeal on May 4, 2004.

"A motion for new trial shall be made within 10 days after imposition of sentence." Utah R. Crim. P. 24(c). In State v. Todd, 2004 UT App 266, 98 P.2d 46, we considered the jurisdictional issue of "whether the 'imposition of sentence' under rule 24(c) . . . is interpreted as the oral announcement of an intended sentence or entry of the written order imposing sentence." Id. at ¶14. We held that "the oral indication of a sentence does not constitute the 'imposition of sentence' for

purposes of determining the timeliness of a motion for new trial." Id. at ¶18. Accordingly, we concluded that "[d]ue to the untimeliness of the motion for new trial, the time period for filing the notice of appeal was not tolled, and therefore, the notice of appeal was untimely." Id. at ¶22. A motion for new trial filed prior to entry of an order imposing sentence "will not be treated as filed after entry, as permitted in certain situations by rule 4(c) [of the Utah Rules of Appellate Procedure], but rather must be regarded as untimely." Id. at ¶19.

Marble's motion for new trial was premature because it was filed prior to the imposition of sentence, and it did not toll the time for an appeal from the final judgment entered on October 28, 2003. "If an appeal is not timely filed, this court lacks jurisdiction to hear the appeal." Serrato v. Utah Transit Auth., 2000 UT App 299, ¶7, 13 P.3d 616. "When a matter is outside the court's jurisdiction it retains only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989).

We grant the State's motion to dismiss, and we dismiss this appeal for lack of jurisdiction.

James Z. Davis, Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge