

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20050989-CA
v.	)	
	)	F I L E D
Gary Lynn Phillips,	)	(December 22, 2005)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2005 UT App 560</span>

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Third District, Salt Lake Department, 041904427  
The Honorable Dennis M. Fuchs

Attorneys: Josie E. Brumfield, Salt Lake City, 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:

Gary Lynn Phillips appeals from the district court's post-sentencing judgment and commitment. This matter is before the court on its own motion for summary disposition on the basis that the grounds for appeal are so insubstantial as not to merit further proceedings or consideration.

On December 7, 2004, Phillips pleaded guilty to possession of a controlled substance, a second degree felony, in violation of Utah Code section 58-37-8(2)(a)(i). See Utah Code Ann. § 58-37-8(2)(a)(i) (Supp. 2005). The district court entered Phillips's sentence on February 1, 2005, and subsequently entered a post-sentencing judgment and commitment on September 12, thereby terminating Phillips's probation.

Phillips did not file a notice of appeal from the sentence, judgment, and commitment entered in this case. Instead, Phillips appealed only from the post-sentence judgment and commitment. Although the appeal from the post-sentence judgment was timely, it is clear that Phillips raises no issues that pertain to this particular order. To the contrary, Phillips argues generally that his right to a speedy trial was denied under Utah Code section 77-1-6(1)(f). See Utah Code Ann. § 77-1-6(1)(f) (2003).

This argument clearly relates to the original sentence, judgment, and commitment.

An appeal must be filed within thirty days from the entry of a final judgment or order. See Utah R. App. P. 4. In a criminal case, it is "the sentence itself which constitutes a final judgment from which the appellant has the right to appeal." State v. Bower, 2002 UT 100, ¶4, 57 P.3d 1065; see also State v. Gerrard, 584 P.2d 885, 886 (Utah 1978). The "30-day period for filing a notice of appeal in a criminal case . . . is jurisdictional and cannot be enlarged by this [c]ourt." State v. Johnson, 635 P.2d 36, 37 (Utah 1981).

Due to Phillips's untimely appeal, this court lacks jurisdiction to determine the issue on appeal--Phillips's right to a speedy trial. See Loffredo v. Holt, 2001 UT 97, ¶11, 37 P.3d 1070.<sup>1</sup>

Because this court has determined that no substantial question over which it has jurisdiction is presented, the judgment of the district court is affirmed.

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge

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<sup>1</sup>Even if this court had jurisdiction over the issue, it is clear that by pleading guilty, Phillips waived his right to a speedy trial. See United States v. Coffin, 76 F.3d 494, 496 (2d Cir. 1996) (holding that the right to a speedy trial is nonjurisdictional); State v. Parsons, 781 P.2d 1275, 1278 (Utah 1989) ("[B]y pleading guilty, the defendant is deemed to have admitted all of the essential elements of the crime charged and thereby waives all nonjurisdictional defects, including alleged pre-plea constitutional violations.").