

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20050012-CA
v.)	
)	F I L E D
Keith Myles Slater,)	(October 27, 2005)
)	
Defendant and Appellant.)	2005 UT App 457

Third District, Salt Lake Department, 031900558
The Honorable Leslie A. Lewis

Attorneys: Lori J. Seppi and Michael A. Peterson, Salt Lake
City, for Appellant
Mark L. Shurtleff and Matthew D. Bates, Salt Lake
City, for Appellee

Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Keith Myles Slater appeals from the district court's order revoking his probation. More particularly, Slater claims that the district court abused its discretion by denying his motion to reduce his conviction under Utah Code section 76-3-402 (2003).¹ See Utah Code Ann. § 76-3-402 (2003).

To the extent Slater appeals from the denial of his original motion to reduce his conviction, the appeal is untimely and we do not have jurisdiction to review the denial. An appeal must be filed within thirty days from the entry of a final judgment or

¹In making this argument, Slater does not specifically indicate if he is appealing from the denial of his original motion for reduction of sentence that was entered on June 13, 2003, or the alleged verbal motion made during his probation revocation hearing. Accordingly, we examine both denials.

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. When an appeal is untimely filed, this court lacks jurisdiction to hear the appeal. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶7, 13 P.3d 616. When this court lacks jurisdiction, it "retains only the jurisdiction to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). Slater filed a motion to reduce his conviction on April 22, 2003. The trial court denied the motion on June 13, 2003, then sentenced Slater on August 15, 2003. Slater did not file his notice of appeal until January 6, 2005. Thus, the notice of appeal was untimely.

To the extent that Slater appeals from the alleged denial of a second motion to reduce his conviction under Utah Code section 76-3-402, allegedly made during the course of his order to show cause hearing on a probation revocation, the district court did not abuse its discretion in denying the motion.² This court gives deference to the trial court on issues of sentencing. Accordingly, we will not reverse a trial court's decision to deny a motion under Utah Code section 76-3-402 unless it abused its discretion. See State v. Boyd, 2001 UT 30, ¶31, 25 P.3d 985.

At the time of his probation revocation hearing, Slater admitted to failing to comply with several conditions of his probation. This included leaving Odyssey House after only two days. He also admitted to violating his probation by possessing and arranging for the distribution of drugs and possessing a dangerous weapon. The record reveals that the district court originally showed Slater leniency by sentencing him to probation in lieu of prison time despite the recommendation contained within the presentence report. The court was fully aware of the

²Because we have elected to decide this issue on the merits, we do not address the issue of whether a party can properly file a motion for reduction of sentence under Utah Code section 76-3-402 after a sentence has been imposed. Further, without addressing the issue, we will assume that the statement of Slater's counsel, made during the probation revocation hearing, was a proper motion.

potential mitigating circumstances described by Slater. The district court did not abuse its discretion in denying the motion.

Affirmed.

James Z. Davis, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge