

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Sean Sloan,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20050735-CA
v.)	F I L E D
)	(November 3, 2005)
State of Utah (Clint Friel),)	
)	2005 UT App 475
Respondent and Appellee.)	

Second District, Farmington Department, 040700484
The Honorable Rodney S. Page

Attorneys: G. Fred Metos, Salt Lake City, for Appellant
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Billings, Bench, and Greenwood.

PER CURIAM:

Sean Sloan appeals the denial of a petition for post-conviction relief. This case is before the court on a sua sponte motion for summary dismissal for lack of jurisdiction.

On June 16, 2005, the district court entered an order denying Sloan's petition for post-conviction relief. The thirty-day time period for filing a notice of appeal ended on a Saturday; therefore, the period expired on Monday, July 18, 2005. See Utah R. App. P. 4(a). Sloan filed his notice of appeal on July 27, 2005, nine days after the expiration of time for initiating an appeal. Sloan did not file a timely motion to extend the time for filing a notice of appeal, so no extension was granted. Rule 4(e) allows the trial court to extend the time for filing a notice of appeal only upon a "motion filed not later than 30 days after the expiration of the time prescribed" by rule 4(a). Utah R. App. P. 4(e). Accordingly, Sloan must have filed a motion in the district court for an extension of time for appeal no later than August 17, 2005.

Sloan concedes that his notice of appeal was not timely, but seeks a remand to the district court to determine whether an extension may be granted under rule 4(e) based upon a

demonstration of good cause or excusable neglect. We do not remand the case because the time for making a motion to extend has expired. We are precluded from suspending the requirements of that rule, as requested by Sloan. See Utah R. App. P. 2 (precluding the appellate courts from suspending the provisions or requirements of rule 4(e)).

If an appeal is not timely filed, this court has no jurisdiction to consider the appeal. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶7, 13 P.3d 616. When this court determines 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). Accordingly, we dismiss the appeal for lack of jurisdiction.

Judith M. Billings,
Presiding Judge

Russell W. Bench,
Associate Presiding Judge

Pamela T. Greenwood, Judge