

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Defendant and Appellee,)	
)	Case No. 20080141-CA
v.)	
)	F I L E D
Timothy Paul Snyder,)	(May 8, 2008)
)	
Plaintiff and Appellant.)	2008 UT App 159

Second District, Ogden Department, 071901398
The Honorable Ernest W. Jones

Attorneys: Timothy Paul Snyder, Salt Lake City, Appellant Pro Se
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Greenwood, Billings, and McHugh.

PER CURIAM:

This case is before the court on a sua sponte motion for summary disposition. Based upon a review of the entire record, we conclude that we lack jurisdiction to consider the appeal because the notice of appeal was not timely filed.

Appellant Timothy Paul Snyder pleaded guilty to failure to register as a sex offender, a third degree felony. The district court entered its judgment and sentence on August 3, 2007. The district court allowed Snyder to file an untimely motion to withdraw his guilty plea. However, the district court denied the motion on the merits in a December 4, 2007 order. Snyder filed a motion for an extension of the time for appeal under rule 4(e) of the Utah Rules of Appellate Procedure, and the district court granted an extension to February 4, 2008.

Snyder did not file his notice of appeal until February 6, 2008. In his docketing statement, Snyder invoked the prison delivery rule contained in rule 4(g) of the Utah Rules of Appellate Procedure. See Utah R. App. P. 4(g) (stating that a notice of appeal filed by an inmate "is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing"). However, Snyder did not sign the

notice of appeal until February 5, 2008, one day after expiration of the extended time for appeal, and the certificate of mailing contained within the notice of appeal is also dated February 5, 2008. Because the notice of appeal was not deposited in the internal mail system on or before the last day for filing, it was not timely filed under the prison delivery rule.

Because the notice of appeal was untimely, we lack jurisdiction to consider the appeal. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶ 7, 13 P.3d 616. Once a court has determined that it lacks jurisdiction, it "retains only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). In addition, to the extent that the appeal seeks to challenge the validity of the guilty plea, we also lack jurisdiction to consider the appeal because Snyder did not file a timely motion to withdraw the guilty plea. See State v. Merrill, 2005 UT 34, ¶¶ 17-19, 114 P.3d 585.

We dismiss the appeal for lack of jurisdiction.

Pamela T. Greenwood,
Presiding Judge

Judith M. Billings, Judge

Carolyn B. McHugh, Judge