

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20070346-CA
v.)	
)	F I L E D
Kendall R. Swenson,)	(November 1, 2007)
)	
Defendant and Appellant.)	2007 UT App 359

First District, Logan Department, 061100748
The Honorable Gordon J. Low

Attorneys: David M. Perry, Logan, for Appellant
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Bench, Davis, and Thorne.

PER CURIAM:

Kendall R. Swenson appeals from his convictions after a jury trial. This is before the court on its own motion for summary disposition based on lack of jurisdiction.

Under rule 4 of the Utah Rules of Appellate Procedure, a notice of appeal must be filed within thirty days after the entry of the order appealed from. See Utah R. App. P. 4(a). In a criminal case, it is the sentence that constitutes the final judgment from which to appeal. See State v. Bowers, 2002 UT 100, ¶ 4, 57 P.3d 1065. The "[thirty]-day period for filing [a] notice of appeal in a criminal case . . . is jurisdictional and cannot be enlarged by this [c]ourt." Id. ¶ 5 (alterations in original) (quoting State v. Johnson, 635 P.2d 36, 37 (Utah 1984)).

Swenson was sentenced at a sentencing hearing on March 5, 2007. The trial court formally entered Swenson's sentence in the record on March 14, 2007. Swenson filed his notice of appeal on April 20, 2007, thirty-seven days after the entry of his sentence and outside of the time to appeal. As a result, this court lacks jurisdiction over the appeal. See id.

Swenson argues, however, that an addendum to the sentence entered on July 30, 2007, re-started his time to appeal. The rule governing amended judgments in Utah is well-settled:

"[W]here a belated entry merely constitutes an amendment or modification not changing the substance or character of the judgment, such entry is merely a nunc pro tunc entry which relates back to the time the original judgment was entered, and does not enlarge the time for appeal; but where the modification or amendment is in some material matter, the time begins to run from the time of the modification or amendment."

State v. Garner, 2005 UT 6, ¶ 11, 106 P.3d 729 (quoting Adamson v. Brockbank, 112 Utah 52, 185 P.2d 264, 268 (1947)).

Here, the addendum to the sentence did not constitute a material change. The addendum clarified that Swenson's state sentences were to run concurrently with any federal case ongoing. The clarification does not change the substance or character of the judgment, particularly since the failure to specify that the sentences were concurrent in the sentencing order was a mere oversight. As a clarification rather than a material change, the addendum is not sufficient to enlarge the time to appeal. Accordingly, Swenson's notice of appeal was untimely filed and this court lacks jurisdiction over the appeal.

Dismissed.

Russell W. Bench,
Presiding Judge

James Z. Davis, Judge

William A. Thorne Jr., Judge