



In the Missouri Court of Appeals Eastern District

DIVISION ONE

LAMONT CAMPBELL,	)	No. ED108624
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	1922-CC10779
	)	
STATE OF MISSOURI,	)	Honorable Timothy J. Boyer
	)	
Respondent.	)	Filed: May 18, 2021

Lamont Campbell (“Appellant”) appeals the judgment dismissing his Rule 29.15¹ motion for post-conviction relief as untimely filed. Because Appellant has failed to file a timely notice of appeal and has failed to request this Court for a special order to file a notice of appeal out of time under Rule 30.03,² we dismiss Appellant’s appeal.

I. BACKGROUND

After a jury trial, Appellant was found guilty of first-degree murder (Count I) and armed criminal action (Count II). The trial court entered a judgment in accordance with the jury’s verdicts. The court sentenced Appellant to life imprisonment with eligibility for parole for Count I and to twenty years of imprisonment for Count II, with the sentences to run concurrently.

¹ All references to Rule 29.15 are to the version of Missouri Supreme Court Rule 29.15 effective from January 1, 2018 to the present.

² All references to Rule 30.03 are to the version of Missouri Supreme Court Rule 30.03 effective from January 1, 1980 to the present. Rule 30.03, which is set out in full in Section II. of this opinion, allows a defendant or the state having the right of appeal to seek leave to file a notice of appeal out of time within twelve months after a judgment becomes final. See Rule 30.03.

This Court affirmed Appellant’s convictions and sentences on direct appeal in *State v. Campbell*, 558 S.W.3d 554, 556-64 (Mo. App. E.D. 2018). The mandate was issued on September 13, 2018. Thus, Missouri Supreme Court Rule 29.15(b) required Appellant to file his motion for post-conviction relief by December 12, 2018.³ More than six months later, on July 1, 2019, Appellant filed his Rule 29.15 motion for post-conviction relief.⁴

Appellant’s Rule 29.15 motion did not allege any facts showing the untimely filing should be excused. Appellant’s motion also included a completed forma pauperis affidavit containing Appellant’s notarized signature. The motion court did not subsequently appoint post-conviction counsel for Appellant. On August 6, 2019, the motion court entered a judgment dismissing Appellant’s Rule 29.15 motion as untimely filed.

Thereafter, Appellant filed a pro se notice of appeal on December 27, 2019. Appellant’s notice of appeal was accompanied by a motion for leave to proceed in forma pauperis.

On January 21, 2020, the Clerk’s Office of this Court advised Appellant by letter that his notice of appeal “was not complete.” The letter specifically advised Appellant the Missouri Supreme Court had adopted new forms that were effective January 1, 2017, and the letter directed Appellant to “[p]lease fill out the [n]ew [n]otice of [a]ppeal [f]orms and [r]eturn to this office by February 5, 2020.” On February 3, 2020, Appellant, acting pro se, filed the correct notice of appeal forms with Clerk’s Office of this Court. An attorney with the Missouri State

³ Missouri Supreme Court Rule 29.15(b) provides that if a movant, like Appellant, files a direct appeal and an appellate court affirms his convictions and sentences, his motion for post-conviction relief “shall be filed within 90 days after the date the mandate of the appellate court issues . . .” In this case, 90 days from September 13, 2018 was Wednesday, December 12, 2018.

⁴ On November 26, 2018, the Circuit Clerk’s Office for the Circuit Court of the City of St. Louis (“Circuit Clerk’s Office”) file stamped a pro se pleading from Appellant dated November 20, 2018. In this pleading, Appellant requested “a time extension to submit [his] Form 40/29[.]15 [motion] due to the fact” Appellant was allegedly “in the hole (administrative segregation)” and did not “have access to [his] legal documents/Form 40/29[.]15 paperwork” since November 10, 2018; Appellant alleged he had “requested the prison staff to give” him his legal paperwork but that “they [had] refused”; and Appellant asked for the Circuit Clerk’s Office to mail him a blank Form 40 “just in case [he] need[ed] to fill it out and file it again.” Subsequently, Appellant sent his Rule 29.15 motion to the Circuit Court of the City of St. Louis, and the motion was filed stamped by the Circuit Clerk’s Office on July 1, 2019.

Public Defender's Office entered her appearance for Appellant on July 13, 2020. Oral argument and submission of this appeal followed.

II. DISCUSSION

Post-conviction motions filed pursuant to Rule 29.15 are “governed by the [Missouri Supreme Court] [Rules of [C]ivil [P]rocedure insofar as applicable.” Rule 29.15(a). Generally, a notice of appeal must be filed “not later than ten days after the judgment . . . becomes final.” See Rule 81.04(a);⁵ see also section 512.050 RSMo 2016; *Twitty v. State*, 322 S.W.3d 608, 609 (Mo. App. E.D. 2010); but see Rule 30.03 (allowing a defendant or the State having the right of appeal to seek leave to file a notice of appeal out of time within twelve months after a judgment becomes final). “A judgment becomes final at the expiration of thirty days after its entry if no timely authorized after-trial motion is filed.” Rule 81.05(a)(1);⁶ see also *Twitty*, 322 S.W.3d at 609. When computing any time prescribed under the Missouri Supreme Court Rules of Civil Procedure, the day of the judgment is not included, but “[t]he last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday.” Rule 44.01(a);⁷ see also *Twitty*, 322 S.W.3d at 609-10.

“The Missouri Supreme Court has found that the burden placed on a movant to ascertain whether a proper notice of appeal is timely filed is not an unreasonable one.” *Twitty*, 322 S.W.3d at 610 (citing *Gehrke v. State*, 280 S.W.3d 54, 58 (Mo. banc 2009)). “The time limits for filing a notice of appeal are mandatory.” *Twitty*, 322 S.W.3d at 610. Accordingly, if a notice of appeal is untimely filed, our Court may dismiss the appeal. *Id.*

⁵ All references to Rule 81.04 are to the version of Missouri Supreme Court Rule 81.04 effective from January 1, 2017 to the present.

⁶ All references to Rule 81.05 are to the version of Missouri Supreme Court Rule 81.05 effective from January 1, 2000 to the present.

⁷ All references to Rule 44.01 are to the version of Missouri Supreme Court Rule 44.01 effective from July 1, 2013 to the present.

Rule 30.03 allows a defendant or the State having the right of appeal to seek leave to file a notice of appeal out of time within twelve months after a judgment becomes final. See Rule 30.03. The Rule, titled “Notice of Appeal Filed Out of Time – Special Order of Appellate Court,” specifically provides in full that:

Where the defendant or the state has the right of appeal including appeals from an order in a post-conviction proceeding involving a prior felony conviction, but notice of appeal is not filed with the clerk of the trial court within ten days after the judgment becomes final, *the defendant or the state may file a notice of appeal in the trial court if, within twelve months after the judgment becomes final, a motion for leave to file such notice is filed in the appropriate appellate court and it thereafter sustains the motion and grants such leave.*

Such special order may be made by the appellate court, in its discretion, for good cause shown. The order shall specify the time within which the notice of appeal is to be filed in the trial court.

Id. (emphasis added).

“In the absence of any request to [an appellate] court for a special order to appeal under Rule 30.03, the untimeliness of the filing of a notice of appeal is a jurisdictional defect.” *Fuller v. State*, 485 S.W.3d 768, 771 (Mo. App. W.D. 2016) ((quoting *McAnulty v. State*, 755 S.W.2d 24, 24 (Mo. App. S.D. 1988) (citing *Goldberg v. Mos*, 631 S.W.2d 342, 345 (Mo. 1982))). Moreover, “[an appellate court] ‘may not enlarge the period for taking an appeal as provided by’ Rule 30.03.” *Fuller*, 485 S.W.3d at 771 (quoting Missouri Supreme Court Rule 20.01(b)).⁸

In this case, Appellant appeals from a judgment entered on August 6, 2019. The judgment became final thirty days later, on September 5, 2019. See Rule 81.05(a)(1); see also *Twitty*, 322 S.W.3d at 609. Because ten days from when the judgment became final on September 5, 2019 fell on Sunday, September 15, 2019, Appellant was required to file his notice of appeal by Monday, September 16, 2019. See Rule 81.04(a); Rule 44.01(a); see also section 512.050 RSMo 2016; *Twitty*, 322 S.W.3d at 609. However, Appellant did not file a notice of

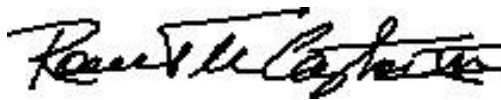
⁸ All references to Rule 20.01 are to the version of Missouri Supreme Court Rule 20.01 effective from January 1, 1980 to the present.

appeal until December 27, 2019, more than three months after the deadline. Although Rule 30.03 allowed Appellant to seek leave to file a notice of appeal out of time, Appellant did not file any such request. See Rule 30.03.

Because Appellant's notice of appeal was untimely filed and because Appellant has failed to request this Court for a special order to file a notice of appeal out of time under Rule 30.03, we dismiss his appeal.⁹ See *Fuller*, 485 S.W.3d at 771; *Twitty*, 322 S.W.3d at 610 (dismissing an appeal under similar circumstances); see also *McAnulty*, 755 S.W.2d at 24 (citing *Goldberg*, 631 S.W.2d at 345); Rule 20.01(b).

III. CONCLUSION

Based on the foregoing, Appellant's appeal is dismissed.

A handwritten signature in black ink, appearing to read "Robert M. Clayton III", written over a horizontal line.

ROBERT M. CLAYTON III, Judge

Colleen Dolan, P.J., and
Kelly C. Broniec, J., concur.

⁹ Appellant argues "[our] Court has jurisdiction to hear this appeal, because on January 21, 2020, it granted [Appellant] . . . until February 5, 2020, to file a corrected notice of appeal and accepted his late notice of appeal on February 3, 2020. This ruling and filing were made less than 5 months after the notice of appeal was originally due to be filed on September 16, 2019, within the prescribed time [of within twelve months after the judgment became final] for filing a notice of appeal in Rule 30.03." Because Appellant has failed to cite any controlling legal authority to support this conclusory argument, and because we can find no such legal authority, we find it has no merit. We also find Appellant's argument has no merit because, (1) the plain language of Rule 30.03 requires, *inter alia*, an appellant to file a motion for leave in the appropriate appellate court in order for the Rule to be invoked; and (2) it is undisputed Appellant did not file any such motion with our Court during the pendency of this appeal. See Rule 30.03 (providing in full that: "Where the defendant or the state has the right of appeal including appeals from an order in a post-conviction proceeding involving a prior felony conviction, but notice of appeal is not filed with the clerk of the trial court within ten days after the judgment becomes final, *the defendant or the state may file a notice of appeal in the trial court if, within twelve months after the judgment becomes final, a motion for leave to file such notice is filed in the appropriate appellate court* and it thereafter sustains the motion and grants such leave. Such special order may be made by the appellate court, in its discretion, for good cause shown. The order shall specify the time within which the notice of appeal is to be filed in the trial court.") (emphasis added).