

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 5, 2023

FILED
04/06/2023
Clerk of the
Appellate Courts

DOUGLAS MARTINEZ v. BILL LEE ET AL.

**Appeal from the Circuit Court for Davidson County
No. 22C881 Joseph P. Binkley, Jr., Judge**

No. M2023-00235-COA-R3-CV

This is an appeal from an order dismissing a petition for writ of mandamus. Because the appellant did not file his notice of appeal within thirty days after entry of the order as required by Tennessee Rule of Appellate Procedure 4(a), we dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

FRANK G. CLEMENT, JR., P.J., M.S., W. NEAL MCBRAYER, and JEFFREY USMAN, JJ.

Douglas Martinez, Memphis, Tennessee, pro se.

Miranda H. Jones, Nashville, Tennessee, for the appellees, William B. Lee, Governor of the State of Tennessee, and Frank Strada, Commissioner of the Tennessee Department of Correction.

MEMORANDUM OPINION¹

The appellees, William B. Lee, Governor of the State of Tennessee, and Frank Strada, Commissioner of the Tennessee Department of Correction, have moved to dismiss this appeal as untimely. The appellant, Douglas Martinez, has not filed a response in opposition to the motion to dismiss.

¹ Under Tennessee Court of Appeals Rule 10, a case decided by memorandum opinion shall not be published and shall not be cited or relied on for any reason in any unrelated case.

Mr. Martinez, an offender subject to community supervision for life, filed a petition for writ of mandamus in the Circuit Court for Davidson County challenging several aspects of his community supervision. The trial court dismissed the petition on November 30, 2022. On December 15, 2022, Mr. Martinez filed a motion for reconsideration, which the trial court considered as a motion to alter or amend under Tennessee Rule of Civil Procedure 59.04. The trial court denied the post-judgment motion on January 13, 2023. Mr. Martinez filed his notice of appeal with the clerk of this Court on February 14, 2023.

Tennessee Rule of Appellate Procedure 4(a) requires that a notice of appeal be filed with the clerk of the appellate court within thirty (30) days after entry of the judgment appealed. If one of the post-judgment motions listed in Tennessee Rule of Appellate Procedure 4(b) and Tennessee Rule of Civil Procedure 59.01 is timely filed, the time for filing the notice of appeal will run from the date of entry of the order granting or denying the motion. The trial court denied Mr. Martinez's post-judgment motion on January 13, 2023. Mr. Martinez did not file his notice of appeal until February 14, 2023, thirty-one days later.

We recognize that Mr. Martinez mailed his notice of appeal to the clerk on February 10, 2023, three days prior to the deadline. However, papers filed with the appellate court are considered timely if they "are received by the clerk within the time fixed for filing or mailed to the office of the clerk by certified return receipt mail or registered return receipt mail within the time fixed for filing." Tenn. R. App. P. 20(a). Filings will also be considered timely if "placed for delivery with computer tracking, either through a commercial delivery service or the United States Postal Service, within the time fixed for filing." *Id.* A filing sent by regular mail will be considered timely only if it is actually received by the clerk within the time fixed for filing. Here, the envelope containing the notice of appeal indicates it was sent by regular mail, and the clerk did not receive the notice until February 14, 2023, one day late.

The thirty-day time limit for filing a notice of appeal is mandatory and jurisdictional. *Albert v. Frye*, 145 S.W.3d 526, 528 (Tenn. 2004); *Binkley v. Medling*, 117 S.W.3d 252, 255 (Tenn. 2003). This Court can neither waive nor extend the time period. Tenn. R. App. P. 2 and 21(b); *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d 856, 868 n.1 (Tenn. Ct. App. 2008); *Jefferson v. Pneumo Servs. Corp.*, 699 S.W.2d 181, 184 (Tenn. Ct. App. 1985). The failure to file a timely notice of appeal deprives this Court of jurisdiction to hear the matter. *Flautt & Mann*, 285 S.W.3d at 869 n.1.

The appeal is dismissed for failure to file a timely notice of appeal. The case is remanded to the trial court for further proceedings consistent with this opinion

PER CURIAM