Court of Appeals
of the State of Georgia

ATLANTA, May 11, 2016

The Court of Appeals hereby passes the following order:

A16A0968. JACKSON v. THE STATE.

The State filed a motion to dismiss the present appeal for lack of jurisdiction due to Appellant Chartavious Jackson's failure to timely file a motion to withdraw his guilty plea and failure to timely file a notice of appeal. Because Jackson failed to file a notice of appeal within 30 days of the order denying his motion to withdraw guilty plea, we lack jurisdiction.

"The proper and timely filing of the notice of appeal is an absolute requirement to confer jurisdiction upon the appellate court." *Johnson v. State*, 234 Ga. App. 675 (507 SE2d 529) (1998). "A notice of appeal shall be filed within 30 days after entry of the appealable decision or judgment complained of. . . ." OCGA § 5-6-38 (a). Furthermore, "[n]o appeal shall be dismissed . . . except . . . [f]or failure to file notice of appeal within the time required as provided in this article or within any extension of time granted hereunder. . . ." OCGA § 5-6-48 (b) (1). In this case, the trial court denied Jackson's motion to withdraw his guilty plea in an order filed April 30, 2015. As a result, Jackson's notice of appeal had to be filed no later than Monday, June 1, 2015. See OCGA § 5-6-38 (a). However, the notice of appeal was not filed until June 4, 2015.[1] "The record fails to reflect that [Jackson] sought or was granted an extension of time in which to file the notice of appeal, nor did he seek or receive

[1] Jackson's claim in his amended notice of appeal that his counsel did not receive notice of the trial court's order until May 3, 2015 is immaterial, as the time to file the notice of appeal runs from "*entry* of the appealable decision or judgment complained of. . . ." (Emphasis supplied.) OCGA § 5-6-38 (a).

permission to file an out-of-time appeal." (Citations omitted.) *Davis v. State*, 280 Ga. 352 (628 SE2d 374) (2006). "In the absence of a timely filed notice of appeal, this Court is without jurisdiction to consider the merits of the case, and the appeal in [this case] must be dismissed." *Johnson*, 234 Ga. App. at 675.

Accordingly, it is hereby ordered that the State's motion to dismiss be GRANTED. It is further ordered that the present appeal be DISMISSED for lack of jurisdiction. See OCGA §§ 5-6-38 (a), 5-6-48 (b) (1).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 05/11/2016
I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

Stephen E. Castlen *, Clerk.*