Court of Appeals
of the State of Georgia

ATLANTA, May 04, 2016

The Court of Appeals hereby passes the following order:

A16A1315, A16A1316. ROYLEE SMITH v. THE STATE.

Roylee Smith pled guilty to false imprisonment, criminal damage to property, battery, simple battery, and domestic violence simple battery in 2011. Smith was sentenced to seven years, one year to serve with the balance probated. In 2012, Smith's probation was revoked for the commission of a new felony offense and the violation of a special condition of his probation. On November 18, 2015, Smith filed a pro se motion for out of time appeal and hearing related to the probation revocation. The trial court denied the motion, and Smith filed his notice of appeal, which appeal was docketed in this Court as Case No. A16A1315. Because the underlying subject matter of Smith's appeal is the revocation of his probation, he was required to file an application for discretionary appeal in order to obtain review of the order he challenges in this Court. See OCGA § 5-6-35 (a) (5); *Jones v. State*, 322 Ga. App. 269 n. 2 (745 SE2d 1) (2013); *Zamora v. State*, 226 Ga. App. 105 (485 SE2d 214) (1997). His failure to do so deprives us of jurisdiction over this appeal.

In Case No. A16A1316, Smith filed a notice of appeal on December 29, 2015, challenging an order entered by the trial court on November 23, 2015. The record contains three orders dated November 23, 2015, and Smith did not specify the order(s) he intended to appeal. Nonetheless, we lack jurisdiction over this appeal because it is untimely. A notice of appeal must be filed within 30 days after entry of an appealable order. See OCGA § 5-6-38 (a). Pretermitting whether the orders were subject to direct appeal, Smith filed his notice of appeal 36 days after entry of the orders, thus his appeal is untimely. The proper and timely filing of a notice of appeal is an absolute requirement to confer jurisdiction on this Court. See *Rowland v. State*,

264 Ga. 872 (1) (452 SE2d 756) (1995). Accordingly, we lack jurisdiction to consider these appeals, which are hereby DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 05/04/2016
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.*