Court of Appeals
of the State of Georgia

ATLANTA, August 31, 2016

The Court of Appeals hereby passes the following order:

A17D0023. JOHN YANG v. THE STATE.

John Yang has filed an application for discretionary review of the trial court's order denying his motion to reduce his sentence. The trial court entered its order on May 25, 2016. Yang filed his application on August 1, 2016.

Ordinarily, if a party applies for discretionary review of a directly appealable order - such as an order denying a timely motion for sentence modification - we grant the application under OCGA § 5-6-35 (j). To fall within this general rule, however, the application must be filed within 30 days of entry of the order to be appealed. See OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State of Ga.*, 190 Ga. App. 734 (380 SE2d 57) (1989). Yang filed his application 68 days after entry of the order he seeks to appeal, and his application is therefore untimely.

Yang contends that his application is timely because he purportedly did not receive the trial court's order until July 29, 2016. However, a trial court's failure to

timely notify a defendant of an order does not extend the time to file an appeal, and the proper remedy in such situations is to file a motion to set aside the order or a motion for an out-of-time appeal. See *Whitfield v. State*, 313 Ga. App. 297, 299 (1) (721 SE2d 211) (2011); *Shouse v. State*, 189 Ga. App. 531 (376 SE2d 911) (1988).

For the reasons stated above, Yang's application is hereby DISMISSED for lack of jurisdiction.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 08/31/2016
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.*