

Court of Appeals of the State of Georgia

ATLANTA, January 7, 2010

The Court of Appeals hereby passes the following order:

A10A0834. NOEL v. THE STATE.

On July 28, 2003, Roman Noel was convicted of numerous offenses. Thirty-two days later, on August 29, 2003, he filed a motion for new trial. The trial court denied that motion on January 16, 2007, and Noel filed a notice of appeal on February 15, 2007.

We lack jurisdiction. Absent an extension of time, a notice of appeal must be filed within 30 days of an appealable judgment to confer jurisdiction on this Court. OCGA § 5-6-38 (a); OCGA § 5-6-39. Although a motion for new trial generally extends the deadline for filing a notice of appeal, such motion is not valid unless filed within 30 days after the entry of judgment. *Wright v. Rhodes*, 198 Ga. App. 269 (401 SE2d 35) (1990); OCGA § 5-5-40 (a). An untimely motion for new trial is void and does not toll the time for filing a notice of appeal. *Wright, supra*.

Because Noel filed his motion for new trial 32 days after entry of the judgment of conviction, the motion did not extend the appeal deadline. Accordingly, his notice of appeal is untimely, and we cannot consider the appeal, which is hereby **DISMISSED**. *Wright, supra* at 269-270.

We note, however, that Noel may be entitled to pursue an out-of-time appeal. He is therefore informed of the following in accordance with *Rowland v. State*, 264 Ga. 872 (452 SE2d 756) (1995): This appeal has been dismissed because you failed to file a timely notice of appeal. If you still wish to appeal, you may petition the trial court for leave to file an out-of-time appeal. If the trial court grants your request, you will have 30 days from the entry of that order to file a notice of appeal referencing your conviction. If the trial court denies your request, you will have 30 days from the

entry of that order to file a notice of appeal referencing the denial of your request for an out-of-time appeal.

The Clerk of Court is directed to send a copy of this order to Noel and Noel's attorney, and the latter is also directed to send a copy to Noel.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN -7 2010

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.

, Clerk.

Willi L. Mart

COURTESY COPY

**Court of Appeals
of the State of Georgia**

HPD

PROPOSED ORDER (A10A0834.70) December 29, 2009 (by DERRICO)	
AGREE	DISAGREE
	

ATLANTA,

The Court of Appeals hereby passes the following order:

A10A0834. NOEL v. THE STATE.

On July 28, 2003, Roman Noel was convicted of numerous offenses. Thirty-two days later, on August 29, 2003, he filed a motion for new trial. The trial court denied that motion on January 16, 2007, and Noel filed a notice of appeal on February 15, 2007.

We lack jurisdiction. Absent an extension of time, a notice of appeal must be filed within 30 days of an appealable judgment to confer jurisdiction on this Court. OCGA § 5-6-38 (a); OCGA § 5-6-39. Although a motion for new trial generally extends the deadline for filing a notice of appeal, such motion is not valid unless filed within 30 days after the entry of judgment. *Wright v. Rhodes*, 198 Ga. App. 269 (401 SE2d 35) (1990); OCGA § 5-5-40 (a). An untimely motion for new trial is void and does not toll the time for filing a notice of appeal. *Wright*, supra.

Because Noel filed his motion for new trial 32 days after entry of the judgment of conviction, the motion did not extend the appeal deadline. Accordingly, his notice of appeal is untimely, and we cannot consider the appeal, which is hereby **DISMISSED**. *Wright*, supra at 269-270.

We note, however, that Noel may be entitled to pursue an out-of-time appeal. He is therefore informed of the following in accordance with *Rowland v. State*, 264 Ga. 872 (452 SE2d 756) (1995): This appeal has been dismissed because you failed to file a timely notice of appeal. If you still wish to appeal, you may petition the trial court for leave to file an out-of-time appeal. If the trial court grants your request, you will have 30 days from the entry of that order to file a notice of appeal referencing your conviction. If the trial court denies your request, you will have 30 days from the

COST DUE LETTER

COURT OF APPEALS OF GEORGIA

47 Trinity Avenue, Suite 501
ATLANTA, GEORGIA 30334

REF: Case No. A10A0834

ROMAN NOEL V. THE STATE

DOCKET DATE: 12/22/2009

=====

BILL OF COST DUE\$80.00

PLEASE REMIT THE ABOVE AMOUNT ON OR BEFORE: 02/08/2010

If you are an attorney and the cost is not paid by the date above your name shall be removed from the roll of attorneys who are permitted to practice in the Court of Appeals of Georgia and that fact will be communicated to the State Bar of Georgia.

Court of Appeals of the State of Georgia

ATLANTA, December 18, 2009

The Court of Appeals hereby passes the following order:

A10A0771. LUKE v. THE STATE.

On April 22, 1994, Orlando Valentino Luke was convicted of numerous offenses, including aggravated assault and possession of cocaine. He filed a motion for new trial almost 15 years later, in January 2009. The trial court denied that motion on March 16, 2009, and Luke filed a notice of appeal on March 26, 2009.

We lack jurisdiction. Absent an extension of time, a notice of appeal must be filed within 30 days of an appealable judgment to confer jurisdiction on this Court. OCGA § 5-6-38 (a); OCGA § 5-6-39. Although a motion for new trial generally extends the deadline for filing a notice of appeal, such motion is not valid unless filed within 30 days after the entry of judgment. *Wright v. Rhodes*, 198 Ga. App. 269 (401 SE2d 35) (1990); OCGA § 5-5-40 (a). An untimely motion for new trial is void and does not toll the time for filing a notice of appeal. *Wright*, supra.

Because Luke filed his motion for new trial 15 years after entry of the judgment of conviction, the motion did not extend the appeal deadline. Accordingly, his notice of appeal is untimely, and we cannot consider the appeal, which is hereby DISMISSED. *Wright*, supra at 269-270.

We note, however, that Luke may be entitled to pursue an out-of-time appeal. He is therefore informed of the following in accordance with *Rowland v. State*, 264 Ga. 872 (452 SE2d 756) (1995): This appeal has been dismissed because you failed to file a timely notice of appeal. If you still wish to appeal, you may petition the trial court for leave to file an out-of-time appeal. If the trial court grants your request, you will have 30 days from the entry of that order to file a notice of appeal referencing your conviction. If the trial court denies your request, you will have 30 days from the

entry of that order to file a notice of appeal referencing the denial of your request for an out-of-time appeal.

The Clerk of Court is directed to send a copy of this order to Luke and Luke's attorney, and the latter is also directed to send a copy to Luke.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 18 2009

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.

Willi Z. Mart 

, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, January 5, 2010

The Court of Appeals hereby passes the following order:

A10A0759. Shepherd Center, Inc. d/b/a Spring Creek House v. Kimberly Simon.

Shepherd Center, Inc. has filed a direct appeal from the trial court's order dismissing as untimely its motion for attorney's fees under OCGA § 9-15-14. However, an order adjudicating such a motion must be made by discretionary application, not by direct appeal. See OCGA § 5-6-35 (a) (10); *Swanson v. Swanson*, 216 Ga. App. 406 (454 SE2d 529) (1995); *Jones v. Padgett*, 186 Ga. App. 362, 363 (2) (367 SE2d 88) (1988). Shepherd Center's failure to file a timely application for discretionary appeal deprives us of jurisdiction to consider this appeal, which is hereby DISMISSED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

JAN - 5 2010

*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.*

, Clerk.

Willi Z. Mantz

**Court of Appeals
of the State of Georgia**

ATLANTA, February 6, 1995

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A95A0000. JOHN DOE v. BOB THE DOG

It appearing that appellant's brief and enumerations of error were due February 1, 1995; and it further appearing that brief and enumerations of error were not filed timely, appellant's appeal is hereby DISMISSED pursuant to Court Rule 13 and Rule 26.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

*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.*

Clerk.