

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

ATLANTA, DEC 06 1995

*The Honorable Court of Appeals met pursuant to adjournment.*

*The following order was passed:*

**A95A1808. STATON v. THE STATE.**

It is hereby ordered that pages 3 and 4 of the opinion in the above-styled case attached hereto be substituted in the opinion previously issued on December 5, 1995.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

DEC 06 1995

*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.*

*William L. Meade*

ignore jurisdictional and procedural statutes and rules, and to change its role from disinterested decision-maker to appellate advocate reviewing a trial record for error." Id. The court held that "dismissal of the appeal is the appropriate and constitutionally permissible course of action when a represented criminal defendant's appeal has procedural deficiencies that deprive the defendant of the right of appellate review of the judgment of conviction." Id. at 875.

Although Rowland involved the failure of appellate counsel to file a brief and enumeration of error after being ordered to do so, we find it controlling here because a properly filed notice of appeal is essential to invoke this court's jurisdiction and by specifically referencing Boothe, supra, the court recognized the prematurely filed notice of appeal as a procedural deficiency which frustrates a criminal defendant's right to appeal for which the remedy of dismissal is appropriate. See id. at 873. Furthermore, we appreciate the court's desire to treat these procedurally deficient appeals in a uniform fashion. Accordingly, this appeal should be dismissed.

A copy of this opinion shall be sent to Staton and to appellate counsel with direction that he send a copy to Staton. Please be advised that your appeal has been DISMISSED because your attorney filed your notice of appeal before the entry of final judgment. If you no longer wish to appeal the final judgment, you need not do anything more. However, if you do still wish to

appeal, you may have the right to an OUT-OF-TIME APPEAL -- but YOU MUST TAKE ACTION to exercise that right by moving for an out-of-time appeal in the trial court. If your motion for an out-of-time appeal is granted, the trial court should appoint another attorney if you want one and cannot pay for one. If your motion for an out-of-time appeal is denied, you may appeal that denial to this court within thirty (30) days of the trial court's decision. Reese v. State, 216 Ga. App. 773, 775 (456 SE2d 271) (1995).

Appeal dismissed. Beasley, C. J., and Pope, P. J., concur.