

COURT OF APPEALS OF THE STATE OF GEORGIA

Thomas Edward Stokes, Jr. v. State

A16A1067 · No. A16A1067 · Decided May 19, 2016

SUMMARY

The Georgia Court of Appeals dismissed Thomas Edward Stokes, Jr.’s appeal for lack of jurisdiction because his notice of appeal was filed more than two years after his convictions and after he waived his pending motion for new trial. The court explained that a timely notice of appeal is required and informed Stokes of the procedure for seeking an out-of-time appeal.

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
JURISDICTION	Georgia
DECIDED	May 19, 2016
DOCKET	A16A1067
DISPOSITION	dismissed
PROCEDURAL POSTURE	Stokes appealed his convictions after waiving a previously filed motion for new trial before the trial court ruled on it.
STANDARD OF REVIEW	The court reviewed its appellate jurisdiction based on the statutory timeliness requirement for filing a notice of appeal.
PRECEDENTIAL VALUE	Published Court of Appeals of Georgia decision
PARTIES	Thomas Edward Stokes, Jr. v. The State

TOPICS

- appellate jurisdiction
- appellate procedure
- final judgment rule
- criminal procedure

PRACTICE AREAS

- Appellate procedure
- Criminal procedure

QUESTIONS PRESENTED

1. Whether the Court of Appeals had jurisdiction over a notice of appeal filed more than two years after the judgment of conviction when the defendant waived a pending motion for new trial before entry of an order on that motion.

HOLDINGS

1. A timely notice of appeal is an absolute requirement for appellate jurisdiction, and because Stokes waived his pending motion for new trial before an order was entered on it, the motion did not extend the time for appealing the judgment of conviction. His notice of appeal, filed more than two years after the judgment, was untimely.

KEY QUOTATIONS

“The proper and timely filing of the notice of appeal is an absolute requirement to confer appellate jurisdiction upon this Court.” (unpaginated order)

“Accordingly, this appeal is hereby DISMISSED for lack of jurisdiction.” (unpaginated order)

FACTUAL BACKGROUND

Stokes was convicted on November 27, 2013, of rape, aggravated sexual battery, and kidnapping with bodily injury. He had filed a timely motion for new trial but later waived that motion before any order was entered on it. He then filed his notice of appeal on January 21, 2016, more than two years after entry of the judgment of conviction.

PROCEDURAL HISTORY

On November 27, 2013, Stokes was convicted of rape, aggravated sexual battery, and kidnapping with bodily injury. He timely filed a motion for new trial, but on January 21, 2016, he filed a notice of appeal stating that he waived the motion and would proceed directly to appeal. The Court of Appeals dismissed the appeal for lack of jurisdiction because the notice was filed more than two years after entry of the judgment of conviction.

DISPOSITION

dismissed

CASES CITED

- Rowland v. State, 264 Ga. 872, 872 (1) (452 SE2d 756) (1995)

OPINION

PER CURIAM.

Court of Appeals of the State of Georgia ATLANTA, _____ May 17, 2016 The Court of Appeals hereby passes the following order: A16A1067. THOMAS EDWARD STOKES, JR. v. THE STATE. On November 27, 2013, Thomas Edward Stokes, Jr. was convicted of rape, aggravated sexual battery and kidnapping with bodily injury. He filed a timely motion for new trial.

However, on January 21, 2016, Stokes filed a notice of appeal from his convictions. In this notice of appeal he “waives his previously filed motion for new trial and proceeds directly to appeal.” We

lack jurisdiction. A notice of appeal must be filed within 30 days of the entry of the order sought to be appealed. OCGA § 5-6-38 (a).

The proper and timely filing of the notice of appeal is an absolute requirement to confer appellate jurisdiction upon this Court. *Rowland v. State*, 264 Ga. 872, 872 (1) (452 SE2d 756) (1995). Although the filing of a motion for a new trial generally extends the deadline for filing an appeal, see OCGA § 5-6-38 (a), Stokes waived his previously filed motion for new trial in this case prior to entry of an order on that motion.

Thus, Stokes's notice of appeal, filed more than two years after entry of the order he seeks to appeal, is untimely. Accordingly, this appeal is hereby DISMISSED for lack of jurisdiction. Because Stokes is represented by counsel, he is informed of the following in accordance with *Rowland v. State*, supra at 875-876: This appeal has been dismissed because you failed to file a timely notice of appeal from your judgment of conviction.

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 Stokes and to his attorney, and the latter also is directed to send a copy to Stokes. Court of Appeals of the State of Georgia 05/17/2016 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.