

COURT OF APPEALS OF THE STATE OF GEORGIA

Reginald Ross v. State

A21D0169 · No. A21D0169 · Decided January 25, 2021

SUMMARY

The Georgia Court of Appeals dismissed Reginald Ross’s application for discretionary appeal for lack of jurisdiction. The court held that the application was filed 33 days after the trial court’s November 18, 2020 order, exceeding the 30-day deadline under OCGA § 5-6-35(d), and that a motion for reconsideration neither extended the filing period nor created an independently appealable order.

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Georgia
DECIDED	January 25, 2021
DOCKET	A21D0169
DISPOSITION	dismissed
PROCEDURAL POSTURE	Ross sought discretionary appellate review of the trial court's dismissal of his motions to set aside a void judgment and dismiss court-appointed counsel, and of the denial of his motion for reconsideration.
STANDARD OF REVIEW	Jurisdictional compliance with the statutory deadline for a discretionary appeal application.
PRECEDENTIAL VALUE	published
PARTIES	Reginald Ross v. The State

TOPICS

[appellate procedure](#) [appellate jurisdiction](#) [criminal procedure](#)

PRACTICE AREAS

[appellate procedure](#) [criminal procedure](#)

QUESTIONS PRESENTED

1. Whether the Court of Appeals had jurisdiction over Ross's discretionary appeal application filed 33 days after entry of the trial court's dismissal order.
2. Whether Ross's motion for reconsideration extended the time to appeal the underlying dismissal order.
3. Whether the order denying reconsideration was independently appealable.

HOLDINGS

1. The Court of Appeals lacked jurisdiction because the discretionary appeal application was filed outside the 30-day period required by OCGA § 5-6-35(d).
2. The motion for reconsideration did not extend the time to appeal the November 18 dismissal order, and the order denying reconsideration was not independently appealable.

KEY QUOTATIONS

“The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith.”

FACTUAL BACKGROUND

While on parole in 2017, Reginald Ross was charged with theft by receiving stolen property and possession of a firearm by a convicted felon. The charges were placed on a dead docket on May 30, 2018. Ross later filed motions seeking to set aside a void judgment and dismiss court-appointed counsel, although the trial court found that no judgment existed to be set aside and that no court-appointed attorney represented him when he filed the motions.

PROCEDURAL HISTORY

Ross was charged in 2017 with theft by receiving stolen property and possession of a firearm by a convicted felon; the charges were placed on a dead docket on May 30, 2018. The trial court dismissed Ross's motions on November 18, 2020, and later denied reconsideration. Ross filed a pro se discretionary appeal application on December 21, 2020, 33 days after the dismissal order. The Court of Appeals dismissed the application for lack of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Boyle v. State, 190 Ga. App. 734, 734 (380 SE2d 57) (1989)
- Bell v. Cohran, 244 Ga. App. 510, 510-511 (536 SE2d 187) (2000)
- Savage v. Newsome, 173 Ga. App. 271, 271 (326 SE2d 5) (1985)

OPINION

PER CURIAM.

Court of Appeals of the State of Georgia ATLANTA,_____ January 19, 2021
The Court of Appeals hereby passes the following order: A21D0169. REGINALD ROSS v. THE STATE. While on parole in 2017, Reginald Ross was charged with theft by receiving stolen property and possession of a firearm by a convicted felon.

On May 30, 2018, the charges were placed on a dead docket. Thereafter, Ross filed motions to set aside a void judgment and to dismiss court appointed counsel.¹ The trial court dismissed the motions on November 18, 2020, on the ground that there was no judgment to be set aside and that no court-appointed attorney represented Ross at the time of his filing. Ross filed a motion for reconsideration, which the trial court also denied.

On December 21, 2020, Ross, appearing pro se, filed his application for discretionary appeal challenging the trial court's order of November 18, 2020 dismissing his motions, as well as the motion for reconsideration.

We, however, lack jurisdiction. An application for discretionary review must be filed within 30 days of entry of the judgment or trial court order sought to be appealed. OCGA § 5-6-35 (d). 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*, 190 Ga. App.

734, 734 (380 SE2d 57) (1989). Pretermitted whether a timely discretionary application would have authorized appellate review of the trial court order at issue here, Ross's application was untimely filed 33 days after the trial court entered its order of November 18, 2020.

To the extent that Ross seeks to appeal the order denying his motion for reconsideration, the motion did not extend the time to appeal ¹ Ross has not provided copies of his motions, in violation of Court of Appeals Rule 31 (e). the November 18 order, and the order on the motion for reconsideration is not appealable in its own right. See *Bell v. Cohran*, 244 Ga. App.

510, 510-511 (536 SE2d 187) (2000); *Savage v. Newsome*, 173 Ga. App. 271, 271 (326 SE2d 5) (1985). Thus, this application is untimely as to the dismissal order and invalid as to the order dismissing his motion for reconsideration.

For these reasons, the application is hereby DISMISSED for lack of jurisdiction. See *Boyle*, 190 Ga. App. at 734. Court of Appeals of the State of Georgia Clerk's Office, Atlanta,_____ 01/19/2021 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.