

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
KAHEEM FAISON,	:	No. 3030 EDA 2019
	:	
Appellant	:	

Appeal from the PCRA Order Entered September 17, 2019
in the Court of Common Pleas of Delaware County
Criminal Division at No. CP-23-CR-0002522-2018

BEFORE: BOWES, J., McCAFFERY, J., AND FORD ELLIOTT, P.J.E.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED SEPTEMBER 23, 2020**

Kaheem Faison appeals *pro se* from the September 17, 2019 order dismissing his timely petition for relief filed pursuant to the Post-Conviction Relief Act (“PCRA”), 42 Pa.C.S.A. §§ 9541-9546. As appellant’s notice of appeal from that order is untimely, we are constrained to quash his appeal.

On September 24, 2018, appellant pled guilty to robbery and related offenses. The trial court sentenced him to an aggregate term of three to six years’ imprisonment, followed by five years’ probation, on October 18, 2018. Appellant did not file post-sentence motions or a direct appeal. On March 15, 2019, appellant filed a timely, *pro se* PCRA petition. The PCRA court appointed Scott D. Galloway, Esq. (“PCRA counsel”), who subsequently

filed a **Turner/Finley**¹ no-merit letter and a motion to withdraw. On June 25, 2019, the PCRA court granted PCRA counsel's motion to withdraw. Thereafter, on July 1, 2019, the PCRA court provided appellant with notice of its intention to dismiss his petition without a hearing, pursuant to Pa.R.Crim.P. 907(1). Appellant filed a **pro se** response to the PCRA court's Rule 907 notice on July 17, 2019. On September 17, 2019, the PCRA court dismissed appellant's PCRA petition without an evidentiary hearing. This appeal followed on October 22, 2019.² On February 7, 2020, this court issued a rule to show cause as to why the appeal should not be quashed as untimely filed. Appellant filed a sparse, six-sentence response to our rule-to-show-cause order on February 18, 2020, arguing that we should excuse his untimely filing because the gangs in prison caused a lockdown that affected his access to the law library. (**See** "Response," 2/18/20 at ¶ 2.)

In his brief, appellant presents four questions for our review (**see** appellant's brief at 5); however, we must first address the apparent untimeliness of his notice of appeal, as we "lack jurisdiction to consider untimely appeals, and we may raise such jurisdictional issues **sua sponte.**" **Commonwealth v. Capaldi**, 112 A.3d 1242, 1244 (Pa.Super. 2015).

¹ **Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988), and **Commonwealth v. Finley**, 550 A.2d 213 (Pa.Super. 1988) (**en banc**).

² The PCRA court did not order appellant to file a concise statement of errors complained of on appeal, in accordance with Pa.R.A.P. 1925(b). The PCRA court filed its Pa.R.A.P. 1925(a) opinion on October 30, 2019.

J. A17043/20

“Absent extraordinary circumstances, this court has no jurisdiction to entertain an untimely appeal.” **Commonwealth v. Burks**, 102 A.3d 497, 500 (Pa.Super. 2014) (citation omitted).

Appellant’s notice of appeal is facially untimely. The order dismissing appellant’s PCRA petition was filed on September 17, 2019, and appellant had until October 17, 2019 to file a timely notice of appeal. **See** Pa.R.A.P. 903(a) (stating, “[t]he notice of appeal . . . shall be filed within 30 days after the entry of the order from which the appeal is taken.”). Appellant did not file his notice of appeal until October 22, 2019, rendering it untimely on its face.³

However, we recognize that appellant is acting **pro se**, and is incarcerated. Under the “prisoner mailbox rule,” an appeal by a **pro se** prisoner is deemed filed on the date the prisoner deposits the appeal with prison authorities or places it in a prison mailbox, though the appeal is actually received after the deadline for filing an appeal. **See Commonwealth v. Chambers**, 35 A.3d 34, 38 (Pa.Super. 2011), **appeal denied**, 46 A.3d 715 (Pa. 2012). In determining the filing date of such appeals, “we are inclined to accept any reasonably **verifiable evidence** of the date that the prisoner deposits the appeal with the prison authorities.” **Commonwealth v. Perez**, 799 A.2d 848, 851 (Pa.Super. 2002) (citation omitted; emphasis added).

³ We note that the order denying PCRA relief clearly instructed appellant that he had 30 days from the date of that order to appeal to this court.

Here, appellant has failed to provide any documentation for our review in his response to our rule-to-show-cause order or in his brief, and the certified record contains no postal receipts or other “verifiable evidence” indicating when appellant’s notice of appeal was deposited with prison authorities. **See id.** Although appellant’s notice of appeal and attached certificate of service are self-dated on October 17, 2019, that does not adequately demonstrate that appellant mailed it from prison on that date. Neither of these items is time-stamped, nor does the record bear any indicia of actual delivery to prison authorities, such as a cash slip or postage marking. **See Commonwealth v. Cruz**, No. 995 EDA 2017, 2018 WL 3865321, at *1 (Pa.Super. August 15, 2018) (unpublished memorandum) (explaining that for prisoner mailbox purposes, a dated notice of appeal and certificate of service must be time-stamped, or the record contain any other evidence indicating the date of actual delivery to prison authorities). Moreover, appellant’s response to the rule-to-show-cause order contains no evidence or exhibits to support his bald claim that his untimely notice of appeal was the result of gang activity in his prison and its effect on his access to the law library. Accordingly, we lack jurisdiction over this appeal and quash it as untimely.

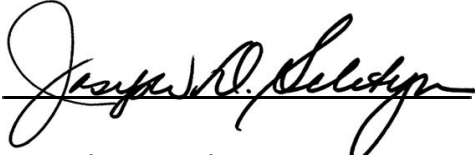
Appeal quashed.

McCaffery, J. joins this Memorandum.

Bowes, J. files a Dissenting Statement.

J. A17043/20

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

*Joseph D. Seletyn, Esq.
Prothonotary*

Date: 9/23/2020