

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

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| COMMONWEALTH OF PENNSYLVANIA, | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| | : | |
| | : | |
| v. | : | |
| | : | |
| DAARON ANTHONY SHEARS, | : | |
| | : | |
| Appellant | : | |
| | : | No. 1954 WDA 2012 |

Appeal from the Judgment of Sentence entered November 2, 2012,
in the Court of Common Pleas of Fayette County,
Criminal Division, at No(s): CP-26-CR-0001660-2011.

BEFORE: SHOGAN, OTT, and STRASSBURGER*, JJ.

MEMORANDUM BY STRASSBURGER, J.: FILED: May 23, 2013

Daaron Anthony Shears (Appellant) appeals the judgment of sentence entered following his convictions for rape, statutory sexual assault, and sexual assault. We quash the appeal as untimely filed.

The trial court sentenced Appellant on November 2, 2012 to an aggregate sentence of 10 to 20 years' incarceration. Appellant filed timely post-sentence motions, which were granted in part on November 8, 2012. On November 8, 2012, the trial court issued a corrected sentencing order.¹ Appellant's notice of appeal was filed on December 11, 2012. We observe "the notice of appeal...shall be filed within 30 days after the entry of the

¹ The new order vacated Appellant's original sentence at count 3 and amended Appellant's sentence to impose a term of incarceration at count 2. Appellant's aggregate sentence of ten to twenty years' incarceration did not change.

* Retired Senior Judge assigned to the Superior Court.

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order from which the appeal is taken.” Pa.R.A.P. 903(a). “A direct appeal in a criminal proceeding lies from the judgment of sentence.” **Commonwealth v. Patterson**, 940 A.2d 493, 497 (Pa. Super. 2007). If a defendant in a criminal case files a timely post-sentence motion, the notice of appeal shall be filed within 30 days of the entry of the order deciding the motion. Pa.R.Crim.P. 720(A)(2)(a).

Time limitations for taking appeals are strictly construed and cannot be extended as a matter of grace. Pa.R.A.P. 105; **Commonwealth v. Braykovich**, 664 A.2d 133, 136 (Pa. Super. 1995). “Nonetheless, this general rule does not affect the power of the courts to grant relief in the case of fraud or breakdown in the processes of the court.” **Patterson, supra** at 498. This Court can raise the matter *sua sponte*, as the issue is one of jurisdiction to entertain the appeal. **Id.** at 497. This Court has no jurisdiction to entertain an untimely appeal. **Id.**

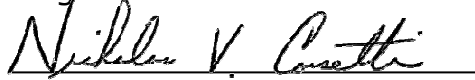
Instantly, the trial court imposed sentence on November 2, 2012. Appellant filed timely post-sentence motions, which were decided on November 8, 2012. On that day the trial court issued an amended sentencing order. Applying the rule set forth in Pa.R.Crim.P. 720(A)(2)(a), the thirtieth day from denial of Appellant’s post-sentence motions was Saturday, December 8, 2012, making the final day to file a timely appeal Monday, December 10, 2012. Appellant’s notice of appeal was filed on December 11, 2012, making it one day late.

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This Court issued an order on January 8, 2013, directing Appellant to show cause why this appeal should not be quashed as untimely. In his response, Appellant indicated that he was waiting on the trial court to grant Appellant *in forma pauperis* (IFP) status, which was requested on November 16, 2012. Receipt of permission to proceed IFP does not toll the time for filing an appeal.² Regardless, Appellant was granted IFP status by order docketed November 28, 2012,³ well in advance of the final day to file a timely notice of appeal. No evidence of record indicates any fraud or breakdown in court processes. **See Patterson, supra.** Accordingly, we quash this appeal as untimely filed.

Appeal quashed.

Judgment Entered.



Deputy Prothonotary

Date: May 23, 2013

² Rule of Appellate Procedure 552(a) provides: "A party who is not eligible to file a verified statement under Rule 551 (continuation of in forma pauperis status for purposes of appeal) may apply to the lower court for leave to proceed on appeal in forma pauperis. The application may be filed before or after the taking of the appeal, but **if filed before the taking of the appeal, the application shall not extend the time for the taking of the appeal.**"

³ The order was delivered to Appellant's counsel via inter-office mail on November 29, 2012.