

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1995 SESSION

<p><b>FILED</b></p> <p>February 13, 1996</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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<p><b>MICHELLE PIERRE HILL,</b>  Appellant,  V.  <b>STATE OF TENNESSEE,</b>  Appellee.</p>	<p>) ) C.C.A. No. 01C01-9506-CC-00175 ) ) Hickman County ) ) Hon. Henry Denmark Bell, Judge ) ) (Post-Conviction) ) )</p>
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FOR THE APPELLANT:

Michelle P. Hill, Pro Se  
R.M.S.I./U-5-B-  
7475 Cockrill Bend Ind. Rd.  
Nashville, TN 37209-1010

FOR THE APPELLEE:

Charles W. Burson  
Attorney General & Reporter

Clinton J. Morgan  
Counsel for the State  
Criminal Justice Division  
450 James Robertson Parkway  
Nashville, TN 37243-0493

Joseph D. Baugh, Jr.  
District Attorney General

Ronald L. Davis  
Asst. Dist. Attorney General  
P.O. Box 937  
Franklin, TN 37065-0937

OPINION FILED: \_\_\_\_\_

**APPEAL DISMISSED**

**PAUL G. SUMMERS,**  
Judge

**OPINION**

Appellant, Michelle P. Hill, was charged with first degree murder. Pursuant to a negotiated agreement, appellant pled guilty to second degree murder in 1993. He was sentenced as a range II multiple offender and received 40 years. He filed a pro se petition for post-conviction relief. The trial court dismissed his petition without conducting an evidentiary hearing on November 29, 1994. On April 10, 1995, appellant filed a pro se Motion for Out of Time Notice of Appeal. This motion was treated as a notice to appeal and the clerk was ordered to prepare the record.

Pursuant to Tenn. R. App. P., Rule 4, a notice of appeal shall be filed within 30 days after entry of the judgment from which an appeal is sought. In criminal proceedings, however, the notice is not jurisdictional. Accordingly, this Court may review untimely appeals and determine whether the notice requirement should be waived. Id.; State v. Mullins, 767 S.W.2d 668 (Tenn. Crim. App. 1988). Waiver is not automatic and should only occur when "the interest of justice" mandates waiver. To hold otherwise, by summarily granting waiver whenever confronted with untimely notices, renders the 30 day requirement a legal fiction and circumvents the rule.

Appellant's pro se notice of appeal was filed more than three months late. Appellant attributes his untimeliness to his ignorance of the law. Although appellant's filing was pro se, Rule 4 does not relieve pro se appellants from the 30 day notice requirement. Accordingly, appellant's pro se status is only a factor and not determinative in deciding whether "the interest of justice" mandates waiver of the 30 day notice requirement.

In determining whether waiver is appropriate this Court shall consider the nature of the issues for review, the reasons for the delay in seeking relief, and other relevant factors presented in each case. We note, however, that our

discretion to waive is not unbridled and must only be exercised so as to serve the interest of justice. The judicial system's integrity must be considered.

We have reviewed appellant's petition, brief, pleadings, and record. We understand his allegations and do not find a showing in support of waiver.<sup>1</sup> Moreover, appellant's notice was filed over 130 days after entry of the order dismissing his petition. We find that in the interest of all parties, as well as the need for an orderly process of expediting cases, waiver is inappropriate in this case. Appellant's appeal is therefore, dismissed, as untimely.

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<sup>1</sup>We note that the plea taken in the case sub judice could serve as a model of the plea process. Judge Clark meticulously explained to appellant his rights. Furthermore, appellant's cursory allegations of ineffective assistance of counsel could not establish prejudice. Appellant knew and understood his possible defense. He discussed, on the record, this defense with both his attorney and the plea-accepting judge. He weighed his options and concluded that a jury would likely "accept the word of the [state's] witnesses." Concerned with witness credibility, appellant pled guilty to second degree murder "to eliminat[e] the risk of life imprisonment or something more significant if the death penalty were asked for."

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PAUL G. SUMMERS, Judge

CONCUR:

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JOE B. JONES, Presiding Judge

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JOSEPH M. TIPTON, Judge