

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 24, 2023

<p>FILED 02/28/2023 Clerk of the Appellate Courts</p>
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MARVIN GREEN v. WASHINGTON COUNTY SHERIFF, ET AL.

**Appeal from the Circuit Court for Washington County
No. 41586 Suzanne Cook, Judge**

No. E2023-00099-COA-R3-CV

Because the notice of appeal in this case was not timely filed this Court lacks jurisdiction to consider this appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

JOHN W. MCCLARTY, J.; D. MICHAEL SWINEY, C.J.; AND, KRISTI M. DAVIS, J.

Marvin Magay James Green, Loris, South Carolina, pro se appellant.

Jeffrey M. Ward, Greeneville, Tennessee, for the appellees, Washington County Sheriff and Washington County.

Hunter Storm Shepard, Johnson City, Tennessee, for the appellees, Johnson City Police Department and Eric Hull.

MEMORANDUM OPINION¹

Upon a review of the notice of appeal and the judgment appealed from, this Court determined that the notice of appeal was not timely filed in accordance with Rule 4(a) of the Tennessee Rules of Appellate Procedure. The Trial Court's judgment was entered on

¹ Rule 10 of the Rules of the Court of Appeals provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

November 18, 2022. Appellant, Marvin Magay James Green (“Appellant”), filed his notice of appeal in this Court on December 21, 2022,² which is thirty-three days after entry of the Trial Court’s judgment. By Order entered January 20, 2023, this Court ordered Appellant to show cause why this appeal should not be dismissed. Appellant failed to respond to our show cause order.

A notice of appeal “shall be filed with the clerk of the appellate court within 30 days after the date of entry of the judgment appealed from . . .” Tenn. R. App. P. 4(a). “The thirty-day time limit for filing a notice of appeal is mandatory and jurisdictional in civil cases.” *Albert v. Frye*, 145 S.W.3d 526, 528 (Tenn. 2004); *see also Ball v. McDowell*, 288 S.W.3d 833, 836 (Tenn. 2009). If a notice of appeal is not timely filed, this Court is not at liberty to waive the procedural defect. Tenn. R. App. P. 2.; *see also Arfken & Assocs., P.A. v. Simpson Bridge Co.*, 85 S.W.3d 789, 791 (Tenn. Ct. App. 2002).

Appellant failed to file his notice of appeal within thirty days of entry of the Trial Court’s judgment. As such, the notice of appeal was untimely filed, thus depriving this Court of jurisdiction to consider the appeal. This appeal is hereby DISMISSED. Costs on appeal are taxed to Appellant, Marvin Magay James Green, for which execution may issue.

PER CURIAM

² Thirty days after entry of the Trial Court’s judgment fell on Sunday, December 18, 2022. As such, Appellant had up to and including Monday, December 19, 2022 within which to timely file a notice of appeal. *See* Tenn. R. App. P. 21(a) (“In computing any period of time prescribed or allowed by these rules . . . [t]he last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday . . ., in which event the period runs until the end of the next day which is not one of the aforementioned days.”).