

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0599

September Term, 2014

ROLAND JETER-EL

v.

STATE OF MARYLAND

Meredith,
Berger,
Nazarian,

JJ.

Opinion by Berger, J.

Filed: March 18, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

Following a jury trial in the Circuit Court for Prince George’s County, appellant Roland Jeter-El (“Jeter-El”), was convicted on November 1, 1990 of second-degree murder, use of a handgun in the commission of a felony, attempted robbery with a deadly weapon, use of a handgun in the commission of a crime of violence, and conspiracy to commit robbery with a deadly weapon. We affirmed Jeter-El’s convictions and sentences on direct appeal in an unreported opinion. *Jeter v. State*, No. 1980, Sept. Term 1990 (filed Oct. 28, 1991). Jeter-El filed a petition for writ of certiorari, which was denied by the Court of Appeals on February 12, 1992. *Jeter v. State*, 325 Md. 397 (1992).

Over twenty years later, Jeter-El filed a motion to correct an illegal sentence on December 5, 2013, raising the same issues that he had raised in his direct appeal. The circuit court denied the motion to correct an illegal sentence on April 2, 2014. Jeter-El filed a notice of appeal on May 9, 2014.

On appeal, Jeter-El presents two questions for our review:

1. Did the trial court fail to comply with Md. Rule 4-327(a)?
2. Did the trial court fail to comply with Md. Rule 4-327(e)?

The State moved to dismiss Jeter-El’s appeal as untimely. As we shall explain, we agree with the State that Jeter-El’s notice of appeal was untimely filed. As such, we are without jurisdiction to consider the substantive issues raised on appeal. Accordingly, we shall grant the State’s motion to dismiss Jeter-El’s appeal.

FACTS AND PROCEEDINGS

On April 7, 1990, Domino's Pizza employee Carl Anthony Krogmann was shot and killed while attempting to deliver a pizza to 11007 Mount Lubentia Way in the Largo area of Prince George's County, Maryland. Jeter-El, who was then eighteen years old, and an accomplice, Arthur Miles, who was then sixteen years old, were ultimately charged with and convicted of Krogmann's murder. Jeter-El and Miles had formulated a plan to rob a pizza delivery employee. Jeter-El placed a telephone call to Domino's Pizza and provided the address of a home he knew to be vacant. Thereafter, Jeter-El and Miles went to the vacant home, entered through an unlocked rear door, and waited for the pizza delivery.

When Krogmann arrived at the vacant home, Jeter-El and Miles opened the door and attempted to persuade Krogmann to enter the property. Krogmann refused to enter and told Jeter-El and Miles the price of the pizza. Jeter-El and Miles told Krogmann to "wait one second" and shut the door while they engaged in a conversation. When Miles reopened the door, Krogmann had begun to return to his vehicle. Miles asked Krogmann to come back to the house, and Krogmann complied. As Krogmann approached the house, Miles shot Krogmann in the chest. Jeter-El maintained that he did not know that Miles was planning to shoot Krogmann and instead explained that he believed that the shooting was "an accident . . . because the guy didn't do nothing."

Both Miles and Jeter-El were ultimately arrested and charged with multiple offenses relating to Krogmann's death. Jeter-El was convicted of second-degree murder, use of a

handgun in the commission of a felony, attempted robbery with a deadly weapon, use of a handgun in the commission of a crime of violence, and conspiracy to commit robbery with a deadly weapon. Jeter-El was sentenced to thirty years' imprisonment for second-degree murder, twenty-years' imprisonment for use of a handgun in the commission of a crime of violence, to be served consecutively, twenty years' imprisonment for attempted robbery with a deadly weapon, to be served consecutively, and twenty years' imprisonment for conspiracy to commit attempted robbery, to be served concurrently. The circuit court merged the conviction for use of a handgun in the commission of a felony with use of a handgun in the commission of a crime of violence for sentencing purposes. Jeter-El's convictions and sentences were affirmed by this Court.

On December 5, 2013 Jeter-El filed the motion to correct an illegal sentence giving rise to the instant appeal. Jeter-El raised the same issues he had raised in his direct appeal. Jeter-El argued that the failure of the court to announce its verdict regarding count three rendered his conviction a nullity.¹ Jeter-El further argued that the clerk's subsequent hearkening of the jury could not cure the initial error. The circuit court denied the motion to correct an illegal sentence on April 2, 2014, setting forth its decision as follows:

[Jeter-El] contends that his sentence should be corrected because Count 3-Attempted Robbery with a Deadly Weapon was not returned in open court as required by Md. Rule 4-327(a).

¹ The court clerk had inadvertently skipped count three when inquiring as to the jury's verdict.

[Jeter-El] relies on *Jones v. State*, 384 Md. 669 (2005), which held “that the trial court could not legally impose a sentence for a verdict that was not orally conveyed in open court and to which the jury was neither polled nor hearkened.” The court in *Jones* explained that the purpose of orally returning the verdict is “to enable the defendant to exercise the right to poll the jury as to the verdicts. Furthermore, orally announcing each count of the verdict prevents possible confusion during polling and hearkening where there are multiple counts considered by the jury.” While [Jeter-El] may be correct that the verdict was not orally returned initially, this case is distinguishable from *Jones*. The jury in this case was polled and Count 3-Attempted Robbery with a Deadly Weapon was orally conveyed in court and the jury confirmed a verdict of guilty.

The circuit court’s order included a notation, signed by the judge’s law clerk, indicating that copies of the order were mailed to Jeter-El as well as the State’s Attorney’s Office. The order was docketed by the circuit court on the same date, April 2, 2014.

On May 9, 2014, Jeter-El, *pro se*, filed a “Motion to Appeal Denial of Motion to Correct Illegal Sentence,” which was treated as a notice of appeal. The certificate of service attached to Jeter-El’s notice of appeal indicates that a copy was mailed to the State’s Attorney’s Office on April 29, 2014. On January 29, 2016, the State filed its brief in this Court. Included in the State’s brief was a motion to dismiss Jeter-El’s appeal on the basis of timeliness.

MOTION TO DISMISS

The State has moved to dismiss Jeter-El’s appeal because it was not filed within thirty days of the entry of the order from which the appeal was taken. As we shall explain, we

agree with the State that the notice of appeal was untimely filed. Accordingly, we lack jurisdiction to consider Jeter-El's appeal.

Maryland Rule 8-202 provides that, with exceptions not relevant here, a “notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.” Pursuant to Rule 8-201, with exceptions not relevant here, “the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202.” The 30-day filing requirement is “jurisdictional, and if the appeal is not timely noted, we must dismiss the appeal.” *Carter v. State*, 193 Md. App. 193, 206 (2010). Indeed, even if the parties consent to proceeding with an untimely appeal -- and in this case, the State has not -- the appeal must be dismissed if the notice is untimely filed. *HIYAB, Inc. v. Ocean Petroleum, LLC*, 183 Md. App. 1, 8 (2008) (“[A]ppellate ‘jurisdiction cannot be conferred by consent of the parties.’”) (quoting *Pearlstein v. Maryland Deposit Ins. Fund*, 79 Md. App. 41, 48 (1989)).

In this case, the circuit court's order was entered on April 2, 2014, and was docketed on the same day. The circuit court's order denied Jeter-El's motion to correct an illegal sentence and rendered a final judgment as to all of Jeter-El's claims. Pursuant to Maryland Rule 8-202, Jeter-El was required to file his notice of appeal by May 2, 2014. Jeter-El did not actually file his notice of appeal until May 9, 2014. Because Jeter-El's notice of appeal

was not filed by the requisite deadline provided by Md. Rule 8-202, we lack jurisdiction to consider his appeal. Accordingly, we are constrained to dismiss the appeal.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.