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SUPREME COURT OF ARKANSAS

No. CR-17-916

TRAVIS ROBERSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: November 11, 2010

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. CR-09-1455-1]

HON. WILLIAM A. STOREY, JUDGE,

AFFIRMED.

ROBERT L. BROWN, Judge

Appellant Travis Ryan Roberson was convicted of driving while intoxicated and driving left of center on August 12, 2009, in the Fayetteville District Court.¹ On September 3, 2009, Roberson filed a notice of appeal² and a certified copy of the docket sheet with the Washington County Circuit Clerk. Roberson was not sentenced, however, until September 16, 2009, and he did not file a certified record with the clerk after his sentencing. On November 6, 2009, the State moved to dismiss his appeal, stating that Roberson had failed to perfect his appeal to the circuit court because he failed to file a copy of the district court's docket sheet within thirty days of September 16, 2009, the date he was sentenced, and, thus, the date of his final judgment. Roberson filed an answer to the motion on

¹As a preliminary matter, the certified docket sheet Roberson filed does not show that he was convicted in a bench trial or that he was sentenced. The final entry on the docket sheet reads "08/20/09 Activity Hearing Rescheduled from 08/12/09 (City Trial) to 09/16/09 (Sentencing)."

²The filing of a notice of appeal is not required under Arkansas Rule of Criminal Procedure 36(c) (2009).

November 12, 2009 and asserted that a dismissal would amount to a violation of his right to trial by jury and would violate his rights to due process and equal protection under both the Arkansas Constitution and the United States Constitution. On November 16, 2009, the circuit court dismissed Roberson's appeal with prejudice and found that Roberson had failed to perfect his appeal within thirty days from the date of judgment on September 16, 2009, which deprived the circuit court of jurisdiction. Roberson appeals from this dismissal.

We turn initially to our standard of review. We construe court rules using the same principles and canons of construction used to interpret our statutes. *McNabb v. State*, 367 Ark. 93, 97, 238 S.W.3d 119, 122 (2006) (citations omitted). The first rule of statutory construction in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id.*, 238 S.W.3d at 122. When the language is plain and unambiguous, there is no need to resort to other rules of statutory construction, and the analysis need go no further. *Id.* at 98, 238 S.W.3d at 122.

When a statute is ambiguous, however, we must interpret it according to legislative intent, and our review becomes an examination of the whole act. *Id.*, 230 S.W.3d at 122. We reconcile provisions to make them consistent, harmonious, and sensible in an effort to give effect to every part. *Id.* at 98, 238 S.W.3d at 122–23. We review issues of statutory construction de novo, as it is for this court to determine what a statute or rule means. *Id.*, 238 S.W.3d at 122. In this respect, we are not bound by the circuit court's decision; nevertheless, in the absence of a showing that the circuit court erred in its interpretation of the law, that interpretation will be accepted as correct on appeal. *Id.*, 238 S.W.3d at 123.

The sole issue before this court is whether the dismissal of Roberson's appeal in circuit court should be affirmed. This court has previously addressed the issue of whether a late filing in circuit court thwarts the right to a jury trial. Parties are not entitled to a jury trial in district court, but that right is inviolate when a party pursues an appeal to circuit court where the case is tried de novo. *Edwards v. City of Conway*, 300 Ark. 135, 138, 777 S.W.2d 583, 584 (1989).

The appeal to circuit court, though, must be properly perfected, because the circuit court has no authority to accept untimely appeals. This court has steadfastly refused to entertain untimely appeals from district court to circuit court. *Lineberry v. State*, 322 Ark. 84, 86, 907 S.W.2d 705, 706 (1995).³ This is so even when the right to a de novo jury trial is lost due to a late filing of the record. *Id.*, 907 S.W.2d at 706. This decision is not at odds with our criminal rules or the Arkansas or United States Constitutions. *Id.* The right to a jury trial presupposes that the party is properly before the court and the matter is within the court's jurisdiction. *Id.*

It is clear to this court that we have already addressed Roberson's claims regarding his right to a jury trial under the Arkansas Constitution and the United States Constitution and rejected them in the *Lineberry* decision. The same rationale that a timely appeal is a prerequisite for jurisdiction in circuit court is true of his equal protection and due process claims as well. Arkansas Rule of Criminal Procedure 36 provides:

³Rule 36, effective January 1, 1996, of the Arkansas Rules of Criminal Procedure was adopted to govern criminal appeals from district court to circuit court. Prior to that time, District Court Rule 9(a) governed such appeals.

(a) Right to Appeal. A person convicted of a criminal offense in a district court, including a person convicted upon a plea of guilty, may appeal the judgment of conviction to the circuit court for the judicial district in which the conviction occurred. The state shall have no right of appeal from a judgment of a district court.

(b) Time for Taking Appeal. An appeal from a district court to the circuit court shall be filed in the office of the clerk of the circuit court having jurisdiction of the appeal within thirty (30) days from the date of the entry of the judgment in the district court. The 30-day period is not extended by the filing of a post-trial motion under Rule 33.3.

(c) How Taken. An appeal from a district court to circuit court shall be taken by filing with the clerk of the circuit court a certified record of the proceedings in the district court. Neither a notice of appeal nor an order granting an appeal shall be required. The record of proceedings in the district court shall include, at a minimum, a copy of the district court docket sheet and any bond or other security filed by the defendant to guarantee the defendant's appearance before the circuit court.

Ark. R. Crim. P. 36(a)–(c) (2009).

Roberson argues that the circuit court erred in granting the State's motion to dismiss because the Sixth Amendment, made applicable to the states via the Fourteenth Amendment, as well as article 2, sections 7 through 10 of the Arkansas Constitution, guarantee him the right to have his guilt determined by a jury. He argues that Rule 36 is at odds with these constitutional requirements because it works an impermissible waiver of the right to a jury trial.

However, this argument by Roberson presupposes that the circuit court has jurisdiction to hear the case on appeal in the first place. His case is readily distinguishable from *Calnan v. State*, 310 Ark. 744, 841 S.W.2d 593 (1992), which he cites to this court, for that reason. In *Calnan*, the appeal had been properly perfected. In the instant case, Roberson failed to perfect his appeal properly. Furthermore, Roberson's claim that his case

is distinguishable from our decision in *Hawkins v. City of Prairie Grove*, 316 Ark. 150, 871 S.W.2d 357 (1994), is to no avail. We fail to see such a distinction.

Roberson urges that he substantially complied with Rule 36 because he filed a certified copy of the docket sheet after his bench-trial conviction but prior to the entry of judgment.⁴ To reiterate, Rule 36 requires that “[a]n appeal from a district court to the circuit court shall be filed in the office of the clerk of the circuit court having jurisdiction of the appeal *within thirty days (30) from the date of the entry of the judgment in the district court.*” Ark. R. Crim. P. 36(b) (emphasis added). Roberson’s docket sheet was not filed within thirty days of the entry of judgement, and, therefore, is not in substantial compliance with the requirements of Rule 36.

Any assertion of a constitutional violation under the Arkansas Constitution and the United States Constitution presupposes that the party is properly within the court’s jurisdiction. *Lineberry*, 322 Ark. at 85, 907 S.W.2d at 706. Rule 36 requires filing within thirty days from the date of entry of the judgment in the district court. Thus, the circuit court did not have jurisdiction to hear Roberson’s case because he failed to perfect his appeal in that court. Failure to establish jurisdiction at the circuit court level forecloses a finding of jurisdiction in this court. *Johnson v. Dawson*, 2010 Ark. 308, at 10, 365 S.W.3d 913, 918.

We must affirm the dismissal.

Affirmed.

Greg Klebanoff, for appellant.

Dustin McDaniel, Att’y Gen., by: *Eileen W. Harrison*, Ass’t Atty Gen., for appellee.

⁴Unlike our Rule of Appellate Procedure—Criminal 2(b)(1), Rule 36 does not provide that a copy of the docket sheet filed before entry of judgment is deemed filed the day after judgment.