

RENDERED: FEBRUARY 29, 2008; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-002511-MR

DALLAS RICHARD HELTON

APPELLANT

v. APPEAL FROM GARRARD CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 04-CR-00061

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
DISMISSING APPEAL

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE AND DIXON, JUDGE; KNOPF,¹ SENIOR
JUDGE.

DIXON, JUDGE: Appellant, Dallas Richard Helton, appeals *pro se*
from an order of the Garrard Circuit Court denying his motion
for post-conviction relief pursuant to RCr 11.42. We find that
Helton's notice of appeal was not timely filed and therefore
dismiss this appeal.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the
Chief Justice pursuant to Section 110(5)(b) of the Kentucky constitution and
Kentucky revised Statutes (KRS) 21.580.

In October 2004, a Garrard County Grand Jury indicted Helton for receiving stolen property over three hundred dollars and for being a first-degree persistent felony offender. In February 2005, after a jury was seated and sworn, Helton entered a guilty plea to the receiving stolen property charge and to an amended charge of being a second-degree persistent felony offender. Pursuant to the Commonwealth's plea agreement, Helton was sentenced to one year on the receiving stolen property charge enhanced to nine years by virtue of his PFO status. The sentence was ordered to run concurrently with his sentence in case no. 04-CR-0060, but consecutively to a one-year sentence in 03-CR-0053, for a total of ten years' imprisonment.²

In January 2006, Helton filed the instant RCr 11.42 motion claiming that ineffective assistance of counsel rendered his plea involuntary. Helton also moved for the appointment of counsel and an evidentiary hearing. Although the trial court granted Helton's motion for counsel, the record indicates that he, in fact, retained private counsel who filed a supplemental RCr 11.42 motion.³

On July 12, 2006, the trial court entered an order denying Helton's post-conviction relief without an evidentiary hearing. The court concluded, "[A]ll of the issues presented by the defendant can be determined from the record without a

² At the time of his plea in this case, Helton was charged in the Garrard Circuit Court under two other indictments with first-degree possession of a controlled substance, possession of drug paraphernalia and third-degree assault.

³ On August 3, 2006, the trial court granted DPA's motion to withdraw as counsel on the grounds that Helton was represented by private counsel.

hearing. The record indicates that the defendant's counsel was effective, that the defendant understood what he was doing, and that his guilty plea was entered voluntarily."

On November 21, 2006, Helton filed a *pro se* notice of appeal to this Court, as well as a motion for the appointment of counsel. Although the trial court appointed counsel, this Court on April 20, 2007, granted DPA's motion to withdraw. On June 20, 2007, Helton filed a "Motion to Hold in Obedience"[sic], arguing that he should be entitled to a belated appeal and additional briefing time due to counsel's failure to file the notice of appeal in compliance with CR 73.02. Helton also requested an additional thirty days to file his *pro se* brief. The record indicates that this Court granted Helton an additional thirty days to file a brief but did not rule on the belated appeal request.

We now conclude that Helton's failure to timely file a notice of appeal precludes this Court from considering his appeal. RCr 12.03(3) requires the notice of appeal to be filed in the trial court within 30 days after the date of entry of the judgment or order . . ." As the order denying Helton's RCr 11.42 motion was entered on July 17, 2006, his November notice of appeal was clearly untimely.

In his motion to this Court seeking a belated appeal, Helton asserted that his counsel was retained to assist him

