



Pendleton v. State

2004 | Cited 0 times | Court of Appeals of Iowa | January 14, 2004

Pendleton appeals from the dismissal of his application for post-conviction relief. APPEAL DISMISSED.

Basil Pendleton was convicted of first-degree murder and first-degree robbery in 1984. He appealed, and his convictions were affirmed. In 1989, his application for post-conviction relief was denied. Pendleton filed a federal habeas corpus petition which was denied by the district court, and the Eighth Circuit Court of Appeals affirmed the district court's denial of relief in 1996.

On August 16, 2001, Pendleton filed a second application for post-conviction relief in Scott County. On May 1, 2002, the State filed a motion to dismiss which was granted by the district court in an order dated July 1, 2002. On July 12, 2002, Pendleton filed a pro se motion to enlarge. The district court ruled on that motion on October 2, and on October 17, Pendleton filed a notice of appeal.

The State contends that Pendleton's appeal is untimely because it was filed more than thirty days after the district court's dismissal of his application for post-conviction relief.

The timeliness of Pendleton's appeal is a jurisdictional matter and is not subject to waiver. State ex. rel. Miller v. Santa Rosa Sales & Mktg., Inc., 475 N.W.2d 210, 214 (Iowa 1991); Hogan v. Chesterman, 279 N.W.2d 12, 15 (Iowa 1979). An appeal must be taken within thirty days of the district court's final order unless certain post-trial motions, including a motion to enlarge, are filed. Iowa R. App. P. 6.5. However, an untimely motion to enlarge will not toll the thirty-day period within which an appeal must be taken. Santa Rosa Sales, 475 N.W.2d at 214, Hogan, 279 N.W.2d at 14, Qualley v. Chrysler Credit Corp., 261 N.W.2d 466, 471 (Iowa 1978). Motions to enlarge pursuant to rule 1.904(2) must be filed within ten days of the district court's final order. Iowa R. Civ. P. 1.1007. Pendleton's motion to enlarge was filed eleven days after the district court's dismissal of his application for post-conviction relief. Because Pendleton's motion to enlarge was untimely, his notice of appeal, filed approximately 109 days after the dismissal was also untimely. We conclude we have no jurisdiction to decide this appeal and must dismiss it without considering the merits.

APPEAL DISMISSED.

