

Serial: **156313**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2008-KP-01373-SCT

WELDON FOXWORTH

v.

STATE OF MISSISSIPPI

ORDER

¶1. This matter is before the Court on Appellant Weldon Foxworth's Notice of Appeal. On the State's Motion to Dismiss Appeal and after due consideration, this Court finds that the appeal is untimely and should be dismissed without prejudice.

¶2. Weldon Foxworth pleaded guilty and was sentenced by the trial court on August 21, 2007. He did not file a Notice of Appeal with this Court until August 12, 2008. Rule 4 of our Rules of Appellate Procedure clearly states, in pertinent part:

[I]n a civil or criminal case in which an appeal or cross-appeal is permitted by law as of right from the trial court to the Supreme Court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from.

Thus, after due consideration of the record and the parties' briefs, this Court finds that Foxworth's Notice of Appeal was untimely filed.

¶3. IT IS, THEREFORE, ORDERED that Foxworth's Notice of Appeal is untimely filed and his appeal is hereby dismissed.

¶4. IT IS FURTHER ORDERED that the dismissal shall be without prejudice to Foxworth, and he shall have leave to file a motion for post-conviction collateral relief as an original civil action in the trial court.

¶5. SO ORDERED, this the 18th day of August, 2009.

/s/ Jess H. Dickinson

JESS H. DICKINSON, JUSTICE