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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 48789-2021
 Plaintiff-Respondent,)
) Canyon County Case No.
 v.) CR14-20-11316
)
 KEIA TAJUANA BLANCHARD,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON**

HONORABLE DAVIS F. VANDERVELDE
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

MARK A. KUBINSKI
Deputy Attorney General
Chief, Criminal Law Division

JOHN C. McKINNEY
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

BEN P. McGREEVY
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712
E-mail: documents@sapd.state.id.us

**ATTORNEY FOR
DEFENDANT-APPELLANT**

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STATEMENT OF THE CASE

Nature Of The Case

Keia Tajuana Blanchard appeals from the intermediate appellate decision by the district court dismissing the appeal of her conviction for misdemeanor possession of marijuana relief as untimely.

Statement Of The Facts And Course Of The Proceedings

Blanchard was charged by citation for misdemeanor possession of marijuana and drug paraphernalia. (R., p.5.) After counsel was appointed to represent her, she pled guilty to the paraphernalia charge and the marijuana charge was dismissed on the state's motion. (R., pp.7-10.) The magistrate court sentenced Blanchard to a \$200 fine in a Judgment that was entered on August 31, 2020. (R., p.10.) Blanchard filed a notice of appeal on February 8, 2021. (R., pp.11- 14.)

On February 17, 2021, the district court entered a Conditional Dismissal, noting that the appeal was filed "162 days after the filing of the judgment and well beyond the forty-two-day jurisdiction limit." (R., pp.17-19.) In its Conditional Dismissal order, the court gave Blanchard seven days "in which to show good cause why this case should not be dismissed as untimely." (R., p.18.) Within that deadline, Blanchard (through counsel) filed a Motion Showing Good Cause (R., pp.20-22), stating, "While it is true that the defendant's case was adjudicated on August 28, 2020, her companion's case was not adjudicated until February 8, 2021 when the State moved to dismiss the case without explanation. This brought rise to the claim that the parties were treated differently, and thus the defendant's appeal" (id., p.20).

On March 16, 2021, the district court held a hearing "on the order to show cause regarding the appeal." (Tr., p. 4, Ls. 9-10.) When asked for argument, the following colloquy took place:

[DEFENSE COUNSEL]: Your Honor, our main concern is that Ms. Blanchard feels that she was treated differently from the State. I'll stand on the pleadings. That's pretty much the argument.

THE COURT: Okay. The only question I have, Mr. Curl, is: Is there any authority that you can cite to that says waiting on another case would be basis for a tolling of any appellate time?

MR. CURL: No, Judge.

THE COURT: Okay.

(Tr., p.4, Ls.15-23.)

On April 14, 2021, the district court entered an Order Dismissing Appeal, finding that it lacked jurisdiction over the appeal because it was untimely, and Blanchard “failed to present any authority indicating that the time within which to file an appeal was tolled.” (R., pp.24-25.) Blanchard filed a timely appeal. (R., pp.27-30.)

ISSUE

Blanchard states the issue on appeal as:

Did the district court err in dismissing Ms. Blanchard's appeal for untimeliness?

(Appellant's brief, p.4.)

The state rephrases the issue as:

Has Blanchard failed to show any error in the district court's dismissal of her appeal from the magistrate court based on untimeliness?

ARGUMENT

Blanchard Has Failed To Show Any Error In The District Court’s Dismissal Of Her Appeal From The Magistrate Court Based On Untimeliness

A. Introduction

“Mindful of the applicable authorities, Keia Tajuana Blanchard asserts that the district court erred when it dismissed her appeal from the magistrate court for untimeliness.” (Appellant’s brief, p.1.) Blanchard has failed to show any error in the district court’s intermediate appellate decision dismissing Blanchard’s appeal for untimeliness.

B. Standard Of Review

“Questions of jurisdiction are questions of law over which this Court exercises free review.” State v. Martin, 159 Idaho 860, 863, 367 P.3d 255, 258 (Ct. App. 2016).

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court “directly review[s] the district court’s decision.” State v. DeWitt, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008) (citing Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)). If the district court properly applied the law to the facts, the appellate court will affirm the district court’s order. See id. (citing Losser, 145 Idaho 670, 183 P.3d 758; Nicholls v. Blaser, 102 Idaho 559, 633 P.2d 1137 (1981)). The appellate court “reviews the magistrate record to determine whether there is substantial and competent evidence to support the magistrate’s findings of fact and whether the magistrate’s conclusions of law follow from those findings.” State v. Tregeagle, 161 Idaho 763, 765, 391 P.3d 21, 23 (Ct. App. 2017).

C. The District Court Correctly Dismissed Blanchard’s Appeal From The Magistrate Court

“The filing of a timely notice of appeal is jurisdictional.” State v. Thomas, 146 Idaho 592, 594, 199 P.3d 769, 771 (2008). “An appellant’s failure to file a timely notice of appeal deprives

the appellate court of jurisdiction and requires dismissal of the appeal.” State v. Schultz, 147 Idaho 675, 677, 214 P.3d 661, 663 (Ct. App. 2009). To be timely, the notice of appeal must be filed within forty-two days of the filing of the judgment or order appealed from. I.C.R. 54(b).

It is undisputed that Blanchard failed to file a timely appeal from her magistrate court conviction for possession of drug paraphernalia. (Appellant’s brief, p.6 (“In her Notice of Appeal to the district court, Ms. Blanchard recognized ‘that this appeal is not timely.’” (citing R., p.11).) Indeed, the magistrate court’s judgment was entered on August 31, 2020 (R., p.10), and Blanchard filed her notice of appeal on February 8, 2021 (R., pp.11- 14) – 162 days later – well beyond the 42-day time limitation of I.C.R.54(b).

Despite the untimeliness of her appeal to the district court, Blanchard filed a Motion Showing Good Cause (R., pp.20-22), stating, “While it is true that the defendant’s case was adjudicated on August 28, 2020, her companion’s case was not adjudicated until February 8, 2021 when the State moved to dismiss the case without explanation. This brought rise to the claim that the parties were treated differently, and thus the defendant’s appeal” (id., p.20). At the hearing on Blanchard’s “good cause” motion, the following discussion between the court and Blanchard’s attorney took place:

THE COURT: Okay. The only question I have, Mr. Curl, is: Is there any authority that you can cite to that says waiting on another case would be basis for a tolling of any appellate time?

MR. CURL: No, Judge.

THE COURT: Okay. I don’t have any further questions for you.

(Tr., p.4, Ls.19-25.)

In rejecting Blanchard’s motion to excuse the untimeliness of her appeal for good cause, the district court held, “Absent some recognized basis for tolling [the appeal] time, the failure to

file a notice of appeal within the limits prescribed by the rules deprives the appellate court of jurisdiction over the appeal.” (R., pp.24-25.) Although the district court referenced I.R.C.P. 83(b) (re: *civil* appeals from magistrate court) instead of I.C.R. 54 (re: *criminal* appeals from magistrate court), the jurisdictional bar operates the same. See Thomas, 146 Idaho at 594, 199 P.3d at 771; Schultz, 147 Idaho at 677, 214 P.3d at 663.

Blanchard acknowledges that she “did not provide the district court with any authority for why the time to file a notice of appeal should be tolled in her case.” (Appellant’s brief, p.6.)

Blanchard repeats the argument she presented to the district court, as follows:

[A]s she asserted before the district court, while her “case was adjudicated on August 28, 2020, her companion’s case was not adjudicated until February 8, 2021 when the State moved to dismiss the case without explanation.” (See R., p.20.) Thus, the State treated Ms. Blanchard and her companion differently. (See R., p.20; Tr., p.4, Ls.15-17.) The district court therefore erred in dismissing Ms. Blanchard’s appeal from the magistrate court for untimeliness.

(Appellant’s brief, p.6.)

Left unexplained by Blanchard is how, or why, her companion’s case should have any impact on her time limitation to appeal from her conviction in magistrate court. As the district court concluded, because Blanchard did not timely appeal from the judgment, and she failed to present any authority to excuse or tolled the untimely filing, the district court lacked jurisdiction to hear her appeal. See I.C.R. 54; Thomas, 146 Idaho at 594, 199 P.3d at 771; Schultz, 147 Idaho at 677, 214 P.3d at 663. Therefore, this Court should affirm the district court’s dismissal of Blanchard’s appeal from the magistrate court.

CONCLUSION

The state respectfully requests this Court to affirm the district court's dismissal of Blanchard's appeal from the magistrate court.

DATED this 19th day of October, 2021.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of October, 2021, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

BEN P. McGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

JCM/dd