

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

FILED

03/17/2025

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DONYELL DEWAYNE HOLLAND

**Criminal Court for Hamilton County
Nos. 311081 and 317210**

No. E2024-01809-CCA-R3-CD

ORDER

Before the court is the pro se Appellant's motion to remand this matter "for a hearing on a motion for new trial." In his motion, the Appellant acknowledges that he filed a premature notice of appeal "before his Motion for New Trial was heard in the Trial Court."

The trial court clerk has provided a rule docket containing the trial court's minute entries that informs the court regarding the relevant procedural history. On May 16, 2024, a Hamilton County Criminal Court jury convicted the Appellant of second degree murder, first degree felony murder, especially aggravated kidnapping, and related firearm offenses. The Appellant was represented by counsel at trial. On June 5, 2024, the Appellant filed a motion for new trial. On August 16, 2024, the Appellant waived his right to counsel and filed a pro se amended motion for new trial. On August 22, 2024, the trial court appointed advisory counsel, Jay Underwood, to assist the Appellant in the remaining trial court proceedings. On October 3, 2024, the Appellant filed a second amended motion for new trial. Following a sentencing hearing on October 25, 2024, the trial court entered judgments imposing a total effective sentence of life plus fifty years' incarceration. On December 6, 2024, the Appellant filed a notice of appeal while the motion for new trial remained scheduled for hearing on January 31, 2025. On January 30, 2025, the trial court entered a minute entry stating, "Due to case pending in court of criminal appeals, motion for new trial not to be heard."

The Tennessee Rules of Appellate Procedure require a notice of appeal to be filed with the appellate court clerk "within 30 days after the date of entry of the judgment appealed from." Tenn. R. App. P. 4(a). The filing of a timely motion for new trial, however, extends the time for filing the notice of appeal to 30 days "from entry of the order denying a new trial." Tenn. R. App. P. 4(c). The Rules further provide that "[a] notice of appeal filed prior to the trial court's ruling [on a motion for new trial] shall be deemed

premature and shall be treated as timely filed after the entry of the order disposing of the motion.” Tenn. R. App. P. 4(e).

The Appellant correctly acknowledges that the notice of appeal is premature in this case. That said, once a timely motion for new trial is filed, the subsequent filing of a notice of appeal prior to the trial court’s ruling on the motion for new trial “does not deprive the trial court of jurisdiction to rule upon the motion.” *Id.* To be clear, “[t]he trial court retains jurisdiction over the case pending the court’s ruling on any timely filed motion” for new trial. *Id.* The court observes that the Appellant’s motion for new trial was timely filed in this case.

Accordingly, for good cause shown, the pro se Appellant’s motion is GRANTED. This matter is REMANDED to the trial court for a period of sixty (60) days for the purpose of the trial court’s adjudication of the Appellant’s motion for new trial and any amendments thereto.

No later than ten (10) days from the entry of the trial court’s order denying a motion for new trial, the trial court clerk shall forward a copy of the order to the appellate court clerk. The notice of appeal shall be deemed timely filed from the entry of the order denying a motion for new trial. Tenn. R. App. P. 4(e). Therefore, the time for preparation of an appellate record does not begin until an order denying a motion for new trial has been entered.

If, however, the trial court grants the Appellant’s motion for new trial, the trial court clerk shall have ten (10) days to forward a copy of the order to the appellate court clerk. The Appellant shall file a motion to voluntarily dismiss this appeal no later than twenty (20) days from the entry of an order granting a motion for new trial.

The appellate court clerk shall provide a copy of this order to the pro se Appellant, to Jay Underwood—trial court advisory counsel, to counsel for the State, to the trial court clerk, and to the trial court.

JUDGE ROBERT H. MONTGOMERY, JR.