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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MALINKA T. MOYE,

Defendant and Appellant.

A135521

**(San Francisco City & County
Super. Ct. No. 201820)**

Defendant Malinka T. Moye (appellant) appeals, in propria persona, the sentence imposed following his plea of no contest. Since appellant failed to file a timely notice of appeal from the sentencing order, his appeal is dismissed. (Cal. Rules of Court, rule 8.104(b).)¹

BACKGROUND

On July 6, 2007, pursuant to a negotiated disposition, appellant pled no contest to misdemeanor vandalism (Pen. Code, § 594, subd. (b)(2)) and the remaining charges, including several felonies, were dismissed. That same day, he was sentenced to probation. Almost three years later, on May 4, 2010, appellant filed a notice of appeal, in propria persona, on form CR-134 (new Jan. 1, 2009). His proposed statement on appeal, also filed on May 4 on form CR-135 (rev. July 1, 2009), states the following grounds for

¹ All rule references are to the California Rules of Court.

the appeal: “criminal proceedings or imprisonment threats & fears thereof,” “duress of personality,” “duress of real property,” “rico act,” and “judicial misconduct.”

On June 12, 2012, pursuant to rule 8.1008, we ordered this case transferred from the Appellate Division of the San Francisco City and County Superior Court since it is a “felony case” (rule 8.304) and the Appellate Division lacked jurisdiction to consider the appeal therefrom. (Pen. Code, §§ 1235, subd. (b), 1466; *People v. Nickerson* (2005) 128 Cal.App.4th 33, 36.)

DISCUSSION

“An appeal in a criminal case is taken by filing a notice of appeal within 60 days after the rendition of judgment. [Citation.] ‘[T]he sole required procedural step of filing a notice of appeal is critical to rendering the appeal operative following a judgment of conviction. In general, a timely notice of appeal is “ ‘essential to appellate jurisdiction.’ [Citation.] It largely divests the superior court of jurisdiction and vests it in the Court of Appeal. [Citation.] An untimely notice of appeal is ‘wholly ineffectual: The delay cannot be waived, it cannot be cured by nunc pro tunc order, and the appellate court has no power to give relief, but must dismiss the appeal on motion of a party or on its own motion.’ [Citation.]” ’ [Citation.]” (*People v. Byron* (2009) 170 Cal.App.4th 657, 664-665.)

The record before us reflects that appellant was sentenced on July 6, 2007. Since his appeal was not filed until almost three years later, it is untimely. We must, therefore, dismiss the appeal. (Rule 8.104(b); *In re Chavez* (2003) 30 Cal.4th 643, 650.)

DISPOSITION

The appeal is dismissed.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUINIERS, J.