

No. SC-CR-01-09

IN THE SUPREME COURT OF THE NAVAJO NATION

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Navajo Nation,  
Plaintiff/Appellee,

v.

Aaron John,  
Defendant/Appellant.

OPINION DENYING MOTION OPPOSING THE APPEAL

Before YAZZIE, Chief Justice, and GRANT and SHIRLEY, Associate Justices.

An appeal from a Window Rock District Court decision concerning Cause No. WR-CR-432-08, the Honorable Judge Carol K. Perry presiding.

David Jordan, Gallup, New Mexico, for Appellant; and Jane T. Nez, Office of the Prosecutor, Window Rock, Navajo Nation, for Appellee.

This matter comes before the Court on the motion by the Office of the Prosecutor to dismiss the appeal and the response filed by Appellant. Appellee asserts Appellant untimely filed their motion for reconsideration and that Rule 47(a)(2)<sup>1</sup> of the Navajo Rules of Criminal Procedure governs the filing of the motion for reconsideration. The Court denies the motion.

It is established law that a criminal appeal must be filed within 30 calendar days of the judgment. 7 N.N.C § 801; N.R.A.P. Rule 2(c). This requirement is jurisdictional. *NN v. Devore*, 5 Nav. R. 155 (Nav. Sup. Ct. 1987). In criminal cases, a N.R.A.P. Rule 5(d) motion for reconsideration must either be filed with the district court before the notice of appeal is filed, *see Lee v. NN*, 6 Nav. R. 124, 125 (Nav. Sup. Ct. 1989) (motion for reconsideration is a mandatory prerequisite to appeal), or the motion can be filed on the same day as the notice of appeal, *see*

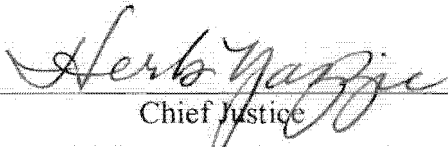
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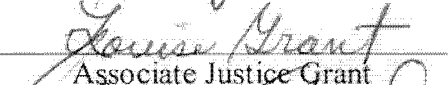
<sup>1</sup> A motion for a new trial shall be made no later than ten (10) days after the verdict has been rendered. Nav. R. Cr. P. Rule 47(a)(2). A motion for a new trial per Rule 47(a) of the Navajo Rules of Criminal Procedure is not applicable to determining the matter at hand.

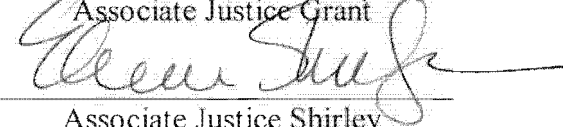
*Help v. Silvers*, 4 Nav. R. 46, 47 (Nav. Ct. App. 1983). Other than the foregoing case law, there is no statute or rule of procedure as to when the motion for reconsideration is to be filed after the final judgment. In other words, there is no time limit on when the motion must be filed after the judgment. However, a motion for reconsideration is deemed automatically denied if the trial court fails to rule on the motion within 5 days of its filing. *NN v. Morgan*, 8 Nav. R. 732, 737 (citing *Help* at 47). Furthermore, we glean from the discussion in *Help* about jurisdiction between the trial court and the appellate court that the notice of appeal can only be considered by this Court after the 5-day period for the district court to act has expired. We therefore hold there are two prerequisites to perfect an appeal: 1) the notice of appeal shall be filed within 30 days of the judgment and 2) the 5-day ruling period for a district court to act upon a motion for reconsideration must have expired.

In this case appellant filed a motion for reconsideration 24 days after judgment; the motion was deemed denied 5 days thereafter by the non-action of the District Court. The notice of appeal was filed the day after the reconsideration was deemed denied and within 30 days of the final judgment. The Prosecutor's motion is therefore DENIED. This appeal is properly before the Court.

Dated this 30<sup>th</sup> day of October, 2009.

  
Chief Justice

  
Associate Justice Grant

  
Associate Justice Shirley