

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW JOHN SILVA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70267

FILED

AUG 30 2016

TRACEY HENDEN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, an amended judgment of conviction, an order denying a motion to withdraw guilty plea, and a second amended judgment of conviction.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

When our preliminary review of the documents before this court revealed potential jurisdictional defects, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, it appeared that the notice of appeal was untimely filed as to the judgment of conviction, amended judgment of

¹The judgments of conviction state that appellant was convicted of driving and/or being in actual physical control of a motor vehicle while under the influence of an intoxicating liquor or alcohol, a category B felony, in violation of NRS 484C.110 and 484C.410-53916.

conviction, and order denying the motion to withdraw guilty plea. It also appeared that appellant was not aggrieved by the second amended judgment of conviction because it increased the amount of credit for time served awarded to appellant.

In response, appellant points out that the judgment of conviction does not impose a fine as required by NRS 484C.410 or order the installation of a breath interlock device as mandated by NRS 484C.460.² Appellant also asserts that the amended judgment of conviction fails to award him the correct amount of credit for time served. He argues that the omissions and error render the judgment of conviction and amended judgment of conviction respectively, non-final pursuant to this court's holding in *Slaatte v. State*, 129 Nev. Adv. Op. 23, 298 P.3d 1170 (2013). We disagree.

In *Slaatte*, this court noted that where restitution is appropriate, the precise amount of restitution is required to be included in the judgment of conviction. 129 Nev. Adv. Op. 23, 298 P.3d at 1170-71; see NRS 176.105(1)(c); NRS 176.033(1)(c). We concluded that a judgment of conviction that imposes restitution but fails to specify the amount is not a final appealable judgment. *Id.*, 129 Nev. Adv. Op. 23, 298 P.3d at 1171. NRS 176.105(1) also requires a judgment of conviction to include the sentence, including the amount of any fine, and the precise amount of credit for time served. But here, unlike in *Slaatte*, the district court did not impose any of these items in uncertain terms. We conclude that neither the failure to impose the required fine and condition, nor the error with respect to the credit for time served, rendered the judgments of

²The State agrees that the fine and interlock device were required.

conviction non-final. *Cf. Whitehead v. State*, 128 Nev. 259, 263 n.2, 285 P.3d 1053, 1055 n.2 (2012) (“[I]f the district court concludes that no restitution is required or warranted as part of a defendant’s sentence, a judgment of conviction need not address restitution to be final.”); *see also Johnson v. State*, 120 Nev. 296, 298, 89 P.3d 669, 670 (2004) (a challenge to the award of credit for time served is appropriately raised on direct appeal). Accordingly, we conclude that the judgment of conviction, entered on June 3, 2014, and the amended judgment of conviction, entered on November 2, 2015, were appealable judgments,³ and the notice of appeal, filed on April 22, 2016, was untimely filed from those judgments.⁴

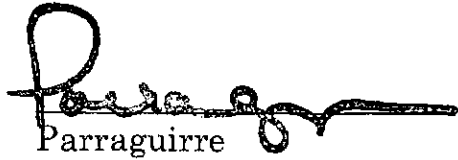
Because appellant’s motion to withdraw guilty plea was filed after entry of the original judgment of conviction, the motion was post-conviction. The notice of appeal was untimely filed from the order denying the post-conviction motion to withdraw, entered on January 4, 2016. And appellant does not assert that he is aggrieved by the second amended judgment of conviction. Accordingly, we conclude that we lack jurisdiction over this appeal, *see Lozada v. State*, 110 Nev. 349, 352; 871 P.2d 944, 946

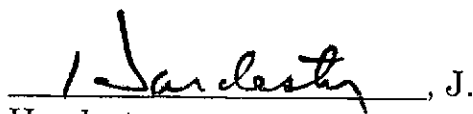
³The amended judgment of conviction was appealable only to the extent it amended the original judgment of conviction. *Cf. Sullivan v. State*, 120 Nev. 537, 540-42, 96 P.3d 761, 763-65 (2004) (holding that entry of an amended judgment of conviction did not provide the good cause necessary under NRS 34.726(1) to overcome the procedural bar with respect to “claims [that] were not related to and did not contest the clerical correction contained in the amended judgment of conviction”)

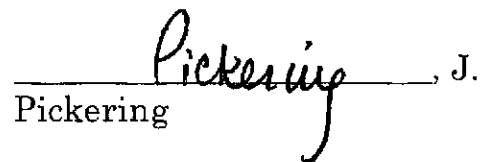
⁴*Cf. Sullivan*, 120 Nev. at 540-42, 96 P.3d at 763-65 (entry of an amended judgment of conviction does not automatically restart the time for filing a post-conviction petition for a writ of habeas corpus).

(1994) (“[A]n untimely notice of appeal fails to vest jurisdiction in this court.”); NRS 177.015 (allowing an aggrieved party to appeal), and we

ORDER this appeal DISMISSED.

 C.J.
Parraguirre

 J.
Hardesty

 J.
Pickering

cc: Hon. Michelle Leavitt, District Judge
Law Offices of Thomas Stafford II
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk
Matthew John Silva