

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2009**

State of Minnesota,
Respondent,

vs.

Roberta Duval Parnell,
Appellant.

**Filed December 18, 2017
Appeal dismissed
Klaphake, Judge***

Dakota County District Court
File No. 19HA-CR-14-4232

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Jeremy P. Knutson, Mendota Heights City Attorney, Grannis & Hauge, P.A., Eagan,
Minnesota (for respondent)

Allan H. Caplan, Hillary B. Parsons, Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Klaphake,
Judge.

S Y L L A B U S

When a defendant is acquitted of a gross misdemeanor offense and is only found
guilty of a misdemeanor offense and given a petty misdemeanor sentence, the case is not a

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

gross misdemeanor case for purposes of the rule specifying the deadline for a direct appeal, and any appeal must be filed within the period allotted for misdemeanors.

O P I N I O N

KLAPHAKE, Judge

On appeal from a final judgment, appellant Roberta Duval Parnell argues that she is entitled to reversal of her conviction or to a new trial because the evidence was insufficient and reversible errors were made at trial. Because this is not a gross misdemeanor case, but a misdemeanor or petty misdemeanor case, and because the notice of appeal was filed 91 days after entry of final judgment, well beyond the 30-day appeal period, the appeal is untimely and must be dismissed.

F A C T S

Parnell was charged with fourth-degree assault of a peace officer in violation of Minn. Stat. § 609.2231, subd. 1 (2012); obstructing legal process or arrest in violation of Minn. Stat. § 609.50, subd. 1(2) (2012); and disorderly conduct in violation of Minn. Stat. § 609.72, subd. 1(3) (2012).¹

At trial, the jury was properly instructed on the assault and disorderly conduct charges. The instructions given to the jury on the obstruction charge did not include the “force or violence” language for a gross misdemeanor offense and instructed only on the

¹ Fourth-degree assault is a gross misdemeanor offense. See Minn. Stat. §§ 609.2231, subd. 1, .03(2) (2012) (defining gross misdemeanor punishment as imprisonment for not more than one year or a fine of not more than \$3,000). The complaint also refers to the obstruction charge as a gross misdemeanor, which requires proof that the act of obstruction “was accompanied by force or violence or the threat thereof.” Minn. Stat. § 609.50, subd. 2(2). But the complaint omits a citation to this penalty provision.

elements for a misdemeanor obstruction charge. *See* Minn. Stat. § 609.50, subds. 1(2), 2(2). The jury acquitted Parnell of assault and disorderly conduct, but found her guilty of the obstruction charge. Parnell filed a motion for judgment of acquittal or a new trial, which the district court denied on the record. The parties agreed to proceed with sentencing, and the district court entered a conviction on the guilty verdict and sentenced Parnell to a petty misdemeanor, with no fine or probation.

Parnell electronically filed a notice of appeal with the clerk of the appellate courts on December 20, 2016, 91 days after final judgment was entered on September 20, 2016.

On appeal, the state argues that the appeal should be dismissed as untimely because it was not filed within 90 days after entry of final judgment, as required by Minn. R. Crim. P. 28.02, subd. 4(3)(a) (requiring notice of appeal to be filed within 90 days after entry of final judgment in felony and gross misdemeanor cases).

During oral arguments before this court, both parties' counsel were asked whether the appeal was timely filed. Both parties' counsel assumed that this is a gross misdemeanor case subject to a 90-day appeal period. And both parties argued whether Parnell had established "good cause" for a one-day extension of time to file the notice of appeal. *See* Minn. R. Crim. P. 28.02, subd. 4(3)(g). Additionally, the court inquired as to whether the case was a gross misdemeanor, a misdemeanor, or a petty misdemeanor case.

ISSUE

Must this appeal be dismissed because it is a misdemeanor or petty misdemeanor case subject to a 30-day appeal period, rather than a gross misdemeanor case subject to a 90-day appeal period?

ANALYSIS

The time requirements for the filing of an appeal are jurisdictional. *See Ford v. State*, 690 N.W.2d 706, 709 (Minn. 2005); *see also State v. Parker*, 278 Minn. 53, 55, 153 N.W.2d 264, 266 (1967) (stating that “[i]t is fundamental that the right of appeal is purely statutory and that the statutory requirements of filing and service are jurisdictional” and that “[t]his court has no power to extend the statutory time for appeal.”)

A criminal defendant may appeal as of right from any adverse final judgment, which occurs when “the district court enters a judgment of conviction and imposes or stays a sentence.” Minn. R. Crim. P. 28.02, subd. 2(1). A defendant may not appeal a guilty verdict until the district court formally enters or records a judgment of conviction. *State v. Hoelzel*, 639 N.W.2d 605, 609 (Minn. 2002). Here, the jury was instructed on the elements of misdemeanor obstructing legal process or arrest, and it found Parnell guilty of obstruction under those instructions. The district court entered and recorded a conviction on that verdict and imposed a petty misdemeanor sentence on Parnell, stating, “[T]his is going to be a petty misdemeanor sentence. It’s not a gross misdemeanor, it’s not a misdemeanor, it’s a petty misdemeanor, which is deemed a non-crime.”²

The deadlines for filing a notice of appeal differ, depending on the type of case. “In felony and gross misdemeanor *cases*,” a defendant must file a notice of appeal within 90 days after entry of final judgment. Minn. R. Crim. P. 28.02, subd. 4(3)(a) (emphasis

² By definition a petty misdemeanor means an offense “which does not constitute a crime and for which a sentence of a fine of not more than \$300 may be imposed.” Minn. Stat. § 609.02, subd. 4a (2012). The district court did not impose a fine but imposed a surcharge of \$80.

added). “In misdemeanor *cases*,” a defendant has 30 days after final judgment to file an appeal. Minn. R. Crim. P. 28.02, subd. 4(3)(b) (emphasis added). For appeal purposes, “petty misdemeanors are treated as misdemeanors.” *State v. Tessema*, 515 N.W.2d 626, 627 (Minn. App. 1994). And, for good cause, this court may grant up to a 30-day extension of time to file a notice of appeal. Minn. R. Crim. P. 28.02, subd. 4(3)(g). But this court lacks authority to extend the appeal period beyond 30 days. Minn. R. Crim. P. 28.01, subd. 3; *see also Ford*, 690 N.W.2d at 709.

The rules setting out the appeal periods refer to misdemeanor or gross misdemeanor “cases,” but do not define that term. To determine the plain and ordinary meaning of an undefined term, this court turns to dictionary definitions. *State v. Thonesavanh*, ___ N.W.2d ___, ___, 2017 WL 3880768, at *3 (Minn. Sept. 6, 2017). “Case” is broadly defined as a “proceeding, action, suit, or controversy at law or in equity.” *Black’s Law Dictionary* 258 (10th ed. 2014).

Here, Parnell’s “case” began as a gross misdemeanor because she was charged with fourth-degree assault of a peace officer. But the jury acquitted her of the assault charge. Regardless of what the state may have intended with respect to the obstructing legal process or arrest charge, the jury did not find that Parnell’s obstruction “was accompanied by force or violence” and so found her guilty of obstruction based solely on the elements of misdemeanor obstruction, not gross misdemeanor obstruction. *See* Minn. Stat. § 609.50, subd. 2(2); 10A *Minnesota Practice*, CRIMJIG 24.26 (2006) (stating that, after a jury finds the elements of obstruction have been proved beyond a reasonable doubt, the jury may then determine if the defendant also committed one of several aggravating factors from Minn.

Stat. § 609.50, subd. 2, that determine the penalty that applies to the obstruction); *see also State v. Ihle*, 640 N.W.2d 910, 915 (Minn. 2002) (stating the jury found defendant guilty of gross misdemeanor obstructing legal process by answering “yes” to special verdict question indicating the obstruction was accompanied by “force or violence.”) Additionally, the district court formally entered a conviction on the jury’s verdict but imposed a sentence within petty misdemeanor limits, making the conviction for a petty misdemeanor. *See* Minn. R. Crim. P. 23.02 (“A conviction is deemed a petty misdemeanor if the sentence imposed is within petty misdemeanor limits.”). Thus, after conviction and sentencing, this case is no longer a gross misdemeanor case but, rather, is a misdemeanor or a petty misdemeanor case, and is subject to the 30-day appeal period. *See Hoelzel*, 639 N.W.2d at 609.

At oral arguments, Parnell’s counsel claimed that she miscalculated the time period and requested that this court grant her a good-cause extension of time to file the notice of appeal. *See* Minn. R. Crim. P. 28.02, subd. 4(3)(g). But, even if we were to find good cause for an extension of time, this court lacks authority to grant more than a 30-day extension because this court “may not alter the time for filing the notice of appeal unless permitted by Rule 28.02, subdivision 4(3)(g).” Minn. R. Crim. P. 28.01, subd. 3; *see also State v. Scott*, 529 N.W.2d 11, 12 (Minn. App. 1995) (declining to extend the time for appeal for lack of authority to do so), *review denied* (Minn. Mar. 14, 1995).

D E C I S I O N

Because Parnell failed to file a timely notice of appeal in this misdemeanor or petty misdemeanor case, the appeal must be dismissed.

Appeal dismissed.