

**[Cite as *State v. Ladd*, 2004-Ohio-4611.]**

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

BRAD R. LADD

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 2004CA00137

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common  
Pleas, Case No. 1999CR00259

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 30, 2004

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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*Wise, J.*

{¶1} Appellant Brad R. Ladd appeals from the decision of the Court of Common Pleas, Stark County, which denied his request to suspend fines and court costs. The relevant facts leading to this appeal are as follows.

{¶2} On April 12, 1999, appellant pled guilty to one count of aggravated robbery, with a firearm specification. Appellant was sentenced to three years in prison on the aggravated robbery charge, and three years on the specification, to run consecutively. Appellant was thereupon conveyed to prison.

{¶3} On March 1, 2004, appellant filed a pro se motion asking the court grant a suspension or waiver of fines and court costs. The court issued a judgment entry denying the motion on March 3, 2004. On April 2, 2004, appellant filed a motion for modification of sentence, which again requested relief from fines and court costs. The court denied same on April 6, 2004.

{¶4} On May 3, 2004, appellant filed a notice of appeal.<sup>1</sup> He herein raises the following sole Assignment of Error:

{¶5} "1. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE DEFENDANT-APPELLANT THE SUSPENSION OF FINES AND/OR COURT (SIC) COSTS WITHOUT MAKING SPECIFIC FINDINGS REGARDING HIS ABILITY TO PAY."

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<sup>1</sup> Appellant's notice of appeal pertains to the trial court's denial (on April 6, 2004) of his motion for modification of sentence. However, appellant's brief creates confusion by referencing his earlier motion for suspension of fines and court costs. Appellant's appeal of the April 6, 2004 judgment entry is thus timely under App.R. 4(A).

I.

{¶6} In his sole Assignment of Error, appellant challenges the court’s denial of his motion for modification of sentence without findings on his ability to pay fines and costs.

{¶7} The record reveals that appellant’s motion for modification of sentence is a re-captioned request to suspend fines and costs. In fact, the memorandum in support of his motion for modification of sentence is nearly verbatim with his previous memorandum in support of the motion to waive fines and court costs. Because appellant failed to attempt an appeal of the earlier denial of his motion to waive fines and costs, we find the trial court could have properly denied the motion for modification of sentence on the basis of res judicata. See *State v. Gruber*, Stark App.No. 2003CA00134, 2003-Ohio-6113, ¶ 10. The Assignment of Error is overruled.

{¶8} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Stark County, Ohio, is hereby affirmed.

By: Wise, J.

Gwin, P. J., and

Farmer, J., concur.

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JUDGES

