

Jack M. Estes, II, appeals his sentence following the revocation of his probation and the denial of his motion for credit time. Finding *sua sponte* that Estes failed to properly bring this appeal, we dismiss.

The relevant facts follow. On February 28, 2008, Estes pled guilty to one count of theft as a class D felony. The plea agreement, which was approved by the Hendricks Circuit Court, provided that Estes receive a sentence of 1,095 days with 915 days suspended. On September 11, 2008, the State filed a petition to revoke probation. On September 30, 2009, the court entered an Order of Disposition on Probation Violation which found that Estes violated his probation. On June 18, 2010, Estes filed a notice of belated appeal.

On June 29, 2010, the court entered an order stating that Estes's belated notice of appeal was filed "without the court's permission as required by Post-Conviction Rule 2" and ordered the clerk to strike Estes's notice of belated appeal from the record. Appellant's Appendix at 83. On September 27, 2010, Estes filed a verified petition for leave to file a belated notice of appeal pursuant to Post-Conviction Rule 2. On October 18, 2010, the court granted Estes' petition for leave to file a belated notice of appeal. On November 12, 2010, Estes filed an amended belated notice of appeal in which he stated that he was appealing the "Order of Disposition on Probation Violation." *Id.* at 100.

Ind. Post-Conviction Rule 2 "allows belated appeals in certain criminal cases." Dawson v. State, 943 N.E.2d 1281, 1281 (Ind. 2011). Ind. Post-Conviction Rule 2 defines an eligible defendant as "a defendant who, but for the defendant's failure to do so

timely, would have the right to challenge on direct appeal a conviction or sentence after a trial or plea of guilty by filing a notice of appeal, filing a motion to correct error, or pursuing an appeal.”¹ The Indiana Supreme Court recently decided that “the sanction imposed when probation is revoked does not qualify as a ‘sentence’ under the Rule” and “belated appeals from orders revoking probation are not presently available pursuant to Post-Conviction Rule 2.” 943 N.E.2d at 1281. Accordingly, Estes is not an “eligible defendant.” Id. Therefore, we dismiss Estes’s appeal. See id. at 1281-1282.

For the foregoing reasons, we dismiss the appeal.

Dismissed.

FRIEDLANDER, J., and BAILEY, J., concur.

¹ Ind. Post-Conviction Rule 2 also provides:

Section 1. Belated Notice of Appeal

- (a) *Required Showings.* An eligible defendant convicted after a trial or plea of guilty may petition the trial court for permission to file a belated notice of appeal of the conviction or sentence if;
- (1) the defendant failed to file a timely notice of appeal;
 - (2) the failure to file a timely notice of appeal was not due to the fault of the defendant; and
 - (3) the defendant has been diligent in requesting permission to file a belated notice of appeal under this rule.