

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
-vs-	:	CASE NO. 2007-L-079
DAVID A. WALDRUFF,	:	June 15, 2007
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 06 CR 000463.

Judgment: Appeal dismissed.

Charles E. Coulson, Lake County Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender, *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

MARY JANE TRAPP, J.,

{¶ 1} On May 1, 2007, appellant, David A. Waldruff, filed a notice of appeal from a March 29, 2007 judgment of the Lake County Court of Common Pleas, finding him guilty of attempted rape and sentencing him to serve eight years in prison. Appellant was also found to be a sexual predator.

{¶ 2} App.R. 4(A) states in part:

{¶ 3} “A party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed ***”

{¶ 4} In this case, appellant's notice of appeal was due by Monday, April 30, 2007, which was not a holiday or a weekend. The notice of appeal was not filed until Tuesday, May 1, 2007. Thus, the notice was filed one day late.

{¶ 5} App.R. 5(A) states, in relevant part:

{¶ 6} "(1) After the expiration of the thirty day period provided by App.R. 4(A) for the filing of a notice of appeal as of right, an appeal may be taken by a defendant with leave of the court to which the appeal is taken in the following classes of cases:

{¶ 7} "(a) Criminal proceedings;

{¶ 8} "(b) Delinquency proceedings; and

{¶ 9} "(c) Serious youthful offender proceedings.

{¶ 10} "(2) A motion for leave to appeal shall be filed with the court of appeals and shall set forth the reasons for the failure of the appellant to perfect an appeal as of right. ***"

{¶ 11} In the present case, appellant has neither complied with the thirty-day rule set forth in App.R. 4(A) nor sought leave to appeal. Thus, this court is without jurisdiction to consider this appeal. In order to appeal the trial court's decision, appellant must file a motion for delayed appeal at the same time he files a notice of appeal pursuant to App.R. 5(A).

{¶ 12} Based upon the foregoing analysis, this appeal is hereby sua sponte dismissed as being untimely.

{¶ 13} Appeal dismissed.

DIANE V. GRENDALL, J.,

COLLEEN MARY O'TOOLE, J.,

concur.