IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**MEMORANDUM OPINION**
Plaintiff-Appellee,	:	
- vs -	:	**CASE NO. 2011-L-127**
ROBERT L. HARRIS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 08 CR 000142.

Judgment: Appeal dismissed.

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

Robert L. Harris, pro se, PID# 552-342, Marion Correctional Institution, P.O. Box 57, Marion, OH 43302 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Robert L. Harris, appeals the August 23, 2011 Order of the Lake County Court of Common Pleas, denying his Motion for Reconsideration. Harris sought the trial court's reconsideration of an earlier Motion for Additional Jail Time Credit. Harris' Notice of Appeal is not timely. The Order appealed is not a final order. The issue of jail time credit is barred by res judicata. For these reasons, set forth more fully below, the present appeal is dismissed.

{¶2}   On July 29, 2008, the trial court entered a Judgment Entry, sentencing Harris to two consecutive 18-month prison terms following his convictions for Receiving Stolen Property and Failure to Comply with Order or Signal of Police Officer. The court further imposed an additional one-year prison term for violating parole, also to be served consecutively with the other terms. Harris was given credit for 156 days already served.

{¶3}   Harris filed an appeal of his sentence.

{¶4}   On July 24, 2009, this court issued its decision affirming Harris' sentence. *State v. Harris*, 11th Dist. No. 2008-L-126, 2009-Ohio-3653.

{¶5}   On June 20, 2011, Harris filed a Motion for Additional Jail Time Credit. Harris argued the trial court miscalculated the amount of jail time credit in the original sentencing Entry.

{¶6}   On July 19, 2011, the trial court issued an Order, denying Harris' Motion for Additional Jail Time Credit.

{¶7}   On August 1, 2011, Harris filed a Motion for Reconsideration.[1]

{¶8}   On August 23, 2011, the trial court issued an Order, denying Harris' Motion for Reconsideration.

{¶9}   On September 23, 2011, Harris filed his Notice of Appeal from the trial court's August 23, 2011 Order.

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1. Harris did not specify what he wanted the trial court to reconsider. Rather, he states that "the reasons for this" are set forth, more fully, in *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, which case was the basis for his Motion for Additional Jail Time Credit.

{¶10} Pursuant to App.R. 4(A), a notice of appeal shall be filed "within thirty days of the later of entry of the judgment or order appealed." Harris' Notice of Appeal was due on September 22, 2011, and, therefore, was untimely filed.

{¶11} Additionally, "[t]here is no authority for filing a motion for reconsideration of a final judgment at the trial court level in a criminal case." *State v. Leach*, 12th Dist. No. CA2004-02-011, 2005-Ohio-2370, at ¶6, citing *Cleveland Heights v. Richardson* (1983), 9 Ohio App.3d 152, 153. The Ohio Supreme Court has held that a motion for reconsideration of a final judgment is a nullity. Thus, judgments and orders taken from such motions are to be considered nullities, *Pitts v. Ohio Dept. of Transp.* (1981), 67 Ohio St.2d 378, 379, and an appeal from the denial of a motion for reconsideration is subject to dismissal, sua sponte. *State v. Shaffer*, 11th Dist. No. 2009-G-2929, 2009-Ohio-6707, at ¶2.

{¶12} Assuming, arguendo, that the August 23, 2011 Order appealed was properly before this court, the issue of Harris' jail time credit is res judicata, inasmuch as the issue should have been raised as part of the direct appeal of his sentence. *State v. DeMarco*, 8th Dist. No. 96605, 2011-Ohio-5187, at ¶8; *State v. Flemings*, 2nd Dist. No. 24615, 2011-Ohio-4286, at ¶28, and the cases cited therein.

{¶13} For the foregoing reasons, the present appeal is, sua sponte, dismissed.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.