

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
-vs-	:	CASE NO. 2011-L-140
PAUL SMARTT, JR. a.k.a.	:	
MICHAEL SMITH a.k.a.	:	
LYNN SLAUGHTER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 09CR000023.

Judgment: Appeal dismissed.

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

Paul Smartt, Jr., pro se, PID: A602568, North Central Correctional Institution, P.O. Box 1812, Marion, OH 43302 (Defendant-Appellant).

DIANE V. GRENDALL, J.,

{¶1} On October 31, 2011, appellant filed a notice of appeal, pro se, from a September 28, 2011 judgment entry issued by the Lake County Court of Common Pleas, which denied his motion for jail time credit. Appellant’s notice of appeal was due by October 28, 2011.

{¶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 October 28, 2011. Since it was not filed until October 31, 2011, it is untimely by three days.

{¶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. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App.R. 3 and shall file a copy of the notice of appeal with the court of appeals. ***”

{¶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 pursuant to App.R. 5(A). Thus, this court is without jurisdiction.

{¶12} Appeal dismissed, sua sponte, pursuant to App.R. 4(A).

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.