

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

STATE OF OHIO,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellee,	:	
-vs-	:	<b>CASE NO. 2011-L-144</b>
BRIAN C. ALLEN, SR.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 11 CR 000108.

Judgment: Appeal dismissed.

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

*Jay F. Crook*, Shryock, Crook & Associates, LLP, 30601 Euclid Avenue, Wickliffe, OH, 44092 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} On November 2, 2011, appellant, by and through counsel, filed his notice of appeal from a September 29, 2011 judgment of the Lake County Court of Common Pleas, in which he was convicted of receiving stolen property, engaging in a pattern of corrupt activity, and having a weapon under disability. Further, appellant was sentenced to serve sixteen years in prison. Appellant's notice of appeal from the September 29 judgment was due no later than October 31, 2011. Thus, the appeal is untimely by two days.

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

{¶5} “(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:

{¶6} “(a) Criminal proceedings;

{¶7} “(b) Delinquency proceedings; and

{¶8} “(c) Serious youthful offender proceedings.

{¶9} “(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. \*\*\*”

{¶10} 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 to consider this appeal.

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

{¶12} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.