

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
-vs-	:	CASE NO. 2011-L-019
DAVID A. MULL,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 10 CR 000531.

Judgment: Appeal dismissed.

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

David A. Mull, pro se, PID: A530-642, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030-8000 (Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} On February 11, 2011, appellant, David A. Mull, filed his notice of appeal, pro se, from a December 29, 2010 judgment issued by the Lake County Court of Common Pleas. In that entry, the court determined that appellant was not competent to stand trial, and it ordered that he undergo treatment to restore his competency at the Ohio Department of Rehabilitation and Correction.

{¶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 January 28, 2011, which was not a holiday or a weekend. The notice of appeal was not filed until February 11, 2011. Thus, the notice was filed fourteen days 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. 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} There is a letter attached to appellant's notice of appeal, addressed to the clerk of courts, which appears to be setting forth his reasons for failing to file a timely appeal. However, we find that this is not a substitute for an App.R. 5(A) motion for leave to file a delayed appeal. Under this rule, the filing of a motion for leave with this court which sets forth reasons for the delay is mandatory when attempting to file an untimely criminal appeal.

{¶12} 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. Appellant has a remedy to file an untimely appeal from a criminal judgment under App.R. 5(A).

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

{¶14} Appeal dismissed.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.