

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NOS. 2015-T-0112 and 2016-T-0042
KAYLA LILLER,	:	
Defendant-Appellant.	:	

Criminal Appeals from the Trumbull County Court of Common Pleas, Case No. 2015 CR 00040.

Judgment: Appeals dismissed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Ronald D. Yarwood, Degenova & Yarwood, Ltd., 42 North Phelps Street, Youngstown, OH 44503-1130 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, P.J.

{¶1} Appellant, Kayla Liller, appeals from the October 14, 2015 judgment of the Trumbull County Court of Common Pleas sentencing her to serve 7 years in prison after she pleaded guilty to two counts of child endangering. Appellant also appeals from the court’s February 16, 2016 judgment denying her post-sentence motion to withdraw her plea of guilty. For the foregoing reasons, the appeals are dismissed.

{¶2} Appellant was indicted by the Trumbull County Grand Jury on one count of felonious assault, a felony of the second degree, in violation of R.C. 2930.11(A)(1) and (D)(1)(a); one count of child endangering, a felony of the third degree, in violation of R.C. 2919.22(A) and (E)(1) and (c); and one count of child endangering, a felony of the second degree, in violation of R.C. 2919.22(B)(1) and (E)(1) and (2)(d). Appellant entered a plea of not guilty. She later changed her plea and entered a plea of guilty to an amended indictment to each child endangering charge.

{¶3} At the plea hearing, the trial court engaged appellant in a full Crim.R. 11 colloquy after which it determined she knowingly and voluntarily waived all constitutional and statutory rights. On October 7, 2015, the court held a sentencing hearing. The state requested a seven-year term of imprisonment. And, on October 14, 2015, the court imposed an aggregate prison term of seven years. Following the hearing, defense counsel was discharged and a different attorney was retained to handle any post-conviction issues. On October 16, 2015, appellant filed a timely notice of appeal from the judgment of conviction.

{¶4} On December 29, 2015, appellant filed a motion to withdraw her guilty plea. In the motion, appellant asserted her plea was not entered knowingly, intelligently, and voluntarily because, she alleged, trial counsel promised her: (1) she would receive community control and (2) the prosecutor would remain silent and make no recommendation on sentencing.

{¶5} Appellant's counsel subsequently filed a motion in this court to remand the matter to the trial court to resolve appellant's pending motion to withdraw. On January 15, 2016, this court granted that motion, stating because "a ruling on appellant's motion

to withdraw her guilty plea could aid in the present appeal by possibly rendering it moot, we find that a remand to the trial court is warranted.”

{¶6} The trial court denied the motion on February 16, 2016 and, on March 4, 2016, appellant filed a motion, in this court, to supplement the record to include a transcript of the hearing on her motion to withdraw. On March 14, 2016, this court overruled the motion, stating:

{¶7} In moving to supplement the record with the foregoing transcript, appellant suggests that, in addition to appealing her conviction and sentence of October 14, 2015, she also intends to appeal the court’s denial of her motion to withdraw her guilty pleas as part of this appeal. However, appellant has not moved this court to amend her notice of appeal to include the trial court’s February 16, 2016 entry. Moreover, appellant has not submitted any authority which would support that incorporating an appeal from the post-sentencing motion with the present appeal would be proper.

{¶8} On April 21, 2016, the state moved to strike appellant’s brief. The state argued that appellant’s brief only challenged the judgment denying her motion to withdraw her guilty plea. As such, it relied upon the transcript of that proceeding, as well as the February 16, 2016 judgment entry, neither of which were part of the appellate record. Thus, the state maintained the brief must be stricken.

{¶9} On April 27, 2016, appellant filed a notice of appeal from the trial court’s February 16, 2016 judgment; appellant simultaneously filed a motion seeking leave to file an amended notice of appeal.

{¶10} On May 2, 2016, a magistrate’s order was issued purporting to consolidate the underlying cases. The order further provided:

{¶11} [P]ursuant to this order, * * * part of appellant’s April 27, 2016 motion requesting leave to file an amended notice of appeal and docketing statement is overruled as moot. However, the part of the motion requesting that the record be supplement[ed] with the

transcript of proceedings, including any exhibits, from the hearing held on the motion to withdraw her plea is hereby granted.

{¶12} The foregoing order suggests that this court accepted jurisdiction over the appeal from the February 16, 2016 judgment based upon appellant's April 27, 2016 notice of appeal. That notice of appeal was filed over two months after the underlying judgment. Pursuant to App.R. 4, the notice of appeal is untimely.

{¶13} Moreover, it is worth noting that appellant's motion seeking leave to file an amended notice of appeal could not cure the jurisdictional defect. App.R. 3(F), which governs the amendment of a notice of appeal, provides, in relevant part:

{¶14} A party may amend a notice of appeal without leave if the time to appeal from the order that was the subject of the initial notice of appeal has not yet lapsed under App.R. 4. Thereafter, the court of appeals within its discretion and upon such terms as are just may allow the amendment of a notice of appeal, so long as the amendment does not seek to appeal from a trial court order *beyond the time requirements of App.R.4.* (Emphasis added.)

{¶15} App.R. 3(F) narrowly vests an appellate court with discretion to allow the amendment of a timely filed notice of appeal. The "timely filing of a notice of appeal" is a necessary jurisdictional condition for any valid appeal. *Transamerica Ins. Co. v. Nolan*, 72 Ohio St.3d 320 (1995), syllabus.

{¶16} Here, appellant filed her notice of appeal and motion for leave to file an amended notice of appeal of the trial court's February 16, 2016 entry denying her motion to withdraw her guilty plea on April 27, 2016. When these documents were filed, the time to appeal from that order had already lapsed under App.R. 4. Hence, App.R. 3(F) could not be used to amend the first notice of appeal in 11th Dist. No. 2015-T-0112, and, as previously indicated, the second notice of appeal in 11th Dist. App. No.

2016-T-0042 is invalid because it was outside the 30-day jurisdictional period for filing an appeal.

{¶17} No assignments of error have been set forth in 11th Dist. No. 2015-T-0112 relating to the trial court's judgment of conviction; thus, that appeal is dismissed, sua sponte, for failure to prosecute. Further, appellant's appeal in 11th Dist. No. 2016-T-0042 relating to the trial court's judgment denying her motion to withdraw her guilty plea is untimely, and no App.R. 5(A) motion for delayed appeal has been filed. Therefore, that appeal is dismissed as untimely.

For the foregoing reasons, the instant appeals are dismissed.

TIMOTHY P. CANNON, J.,

THOMAS R. WRIGHT, J.,

concur.