

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

STATE OF OHIO,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellee,	:	
-vs-	:	<b>CASE NO. 2017-P-0036</b>
MARC C. RABATIN,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2016 CR 00696.

Judgment: Appeal dismissed.

*Victor V. Viglucci*, Portage County Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

*Gregory A. Price*, 159 South Main Street, Suite 910, Akron, OH 44308 (For Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} On July 7, 2017, appellant, by and through counsel, filed a notice of appeal from a June 6, 2017 judgment entry of the Portage County Court of Common Pleas.

{¶2} Appellant's notice of appeal was due to be filed no later than July 6, 2017, which was not a holiday or a weekend. Thus, his appeal was untimely filed by one day.

{¶3} App.R. 4(A)(1) states in relevant part:

{¶4} “\* \* \* [a] party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within 30 days of that entry.”

{¶5} App.R. 5(A) states:

{¶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. \* \* \*.”

{¶11} In the present case, appellant has neither complied with the thirty-day rule set forth in App.R. 4(A)(1) nor sought leave to appeal under App.R. 5(A). Thus, this court is without jurisdiction to consider this appeal. Appellant has a remedy under App.R. 5(A) to file an untimely appeal from a criminal judgment.

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

{¶13} Appeal dismissed.

DIANE V. GRENDALL, J.,

TIMOTHY P. CANNON, J.,

concur.