

[Cite as *State v. Ross*, 2018-Ohio-700.]

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

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|----------------------|---|-----------------------------|
| STATE OF OHIO, | : | MEMORANDUM OPINION |
| Plaintiff-Appellee, | : | |
| -vs- | : | CASE NO. 2018-A-0004 |
| JOSEPH P. ROSS, | : | |
| Defendant-Appellant. | : | |

Criminal Appeal from the Court of Common Pleas, Case No. 2012 CR 120.

Judgment: Appeal dismissed.

Nicholas Iarocci, Ashtabula County Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Joseph P. Ross, PID# A451-768, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} On January 5, 2018, appellant, pro se, filed a notice of appeal from a November 29, 2017 entry of the Ashtabula County Court of Common Pleas denying his motion to vacate void sentence and/or resentence.

{¶2} Appellant’s notice of appeal was due to be filed by December 29, 2017, which was not a holiday or a weekend. Thus, his appeal was untimely filed by one week.

{¶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} Appellant has a remedy to file an untimely appeal from a criminal judgment under App.R. 5(A), which states in relevant part:

{¶6} App.R. 5(A) states:

{¶7} “(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:

{¶8} “(a) Criminal proceedings;

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

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

{¶11} “(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. * * *.”

{¶12} 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.

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

{¶14} Based on the foregoing, this appeal is hereby sua sponte dismissed as being untimely.

{¶15} Appeal dismissed.

THOMAS R. WRIGHT, P.J.,

TIMOTHY P. CANNON, J.,

concur.