

COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	Case No. CT11-0042
ANDREW R. MARTIN	:	
	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Muskingum County Court of Common Pleas, Case No. CR2009-0110

JUDGMENT: DISMISSED

DATE OF JUDGMENT ENTRY: May 10, 2012

APPEARANCES:

For Appellant:

ANDREW R. MARTIN, #615-320  
P.O. Box 5500  
Chillicothe, OH 45601  
*pro se*

For Appellee:

D. MICHAEL HADDOX  
MUSKINGUM COUNTY  
PROSECUTOR

ROBERT L. SMITH  
27 North Fifth Street  
Zanesville, OH 43701

*Delaney, J.*

{¶1} Appellant Andrew R. Martin appeals from the August 2, 2011 judgment entry of the Muskingum County Court of Common Pleas denying appellant's Motion to Reconsider the denial of his Motion for Resentencing. Appellee is the state of Ohio.

*FACTS AND PROCEDURAL HISTORY*

{¶2} On August 3, 2009, with advice of counsel, appellant withdrew his plea of not guilty and entered a plea of guilty to one count of failure to register as a sexual offender pursuant to R.C. 2950.04, a felony of the first degree. The trial court deferred sentencing upon completion of a pre-sentence investigation.

{¶3} A sentencing hearing was held on August 31, 2009, and appellant was sentenced to a mandatory prison term of three years. The judgment entry notes this sentence is consecutive to a sentence imposed in Licking County Court of Common Pleas, case number 09CR00048, and appellant is subject to a five-year period of postrelease control.

{¶4} Appellant filed no direct appeal from this conviction and sentence.

{¶5} On January 27, 2010, appellant filed a Petition to Vacate or Set Aside Judgment of Conviction or Sentence, alleging he received ineffective assistance of counsel when he entered his guilty plea and the trial court failed to make findings in support of the sentence

{¶6} On February 8, 2010, the trial court denied the Petition to Vacate or Set Aside Judgment of Conviction or Sentence.

{¶7} Appellant did not appeal from this entry.

{¶8} On February 18, 2010, appellant filed a “Motion to Correct Sentence/Re-Sentence Defendant” alleging the within sentence should have been concurrent with, and not consecutive to, his sentence from Licking County. Appellant also moved for an “Evidentiary Hearing” on the earlier Petition to Vacate which had already been denied. The State responded with a Motion to Dismiss.

{¶9} On March 11, 2010, the trial court denied appellant’s Motion to Correct Sentence/Re-Sentence Defendant, finding a defendant convicted of a first-degree felony, with a prior conviction of a first-degree felony, must receive a mandatory sentence, and the consecutive sentence was a negotiated sentence as indicated by the written plea form.

{¶10} On May 12, 2010, appellant filed a Notice of Appeal from the trial court’s decision of March 11, 2010. We dismissed this appeal as untimely.<sup>1</sup>

{¶11} On July 2, 2010, appellant filed a “Motion for Relief from Judgment” before the trial court. This motion was denied on October 8, 2010.

{¶12} On July 14, 2011, appellant filed a “Motion for Resentencing,” asserting the consecutive sentence is void. This motion was denied on July 18, 2011, with the trial court noting, “Please refer to Entry filed March 11, 2010.”

{¶13} On July 26, 2011, appellant filed a “Motion for Reconsideration.” This motion was denied on August 2, 2011.

{¶14} Appellant now appeals from the trial court’s judgment entry of August 2, 2011 denying the Motion to Reconsider.

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<sup>1</sup> Fifth District Court of Appeals, Muskingum County, case no. CT10-0022. We also note that on August 16, 2010, we denied appellant’s motion for delayed appeal. Fifth District Court of Appeals, Muskingum County, case no. CT10-0033.

{¶15} Appellant raises two Assignments of Error:

{¶16} “I. IN THE CASE AT BAR THE TRIAL COURT ABUSED IT'S (*sic*) DISCRETION WHEN IT DENIED THE APPELLANT'S MOTION FOR RE-SENTENCE (*sic*), THEREBY VIOLATING APPELLANT'S UNITED STATES FOURTEENTH AMENDMENT CONSTITUTIONAL RIGHT OF EQUAL PROTECTION OF LAW.”

{¶17} “II. THE TRIAL COURT VIOLATED THE APPELLANT'S FOURTEENTH AMENDMENT CONSTITUTIONAL RIGHT OF DUE PROCESS OF LAW AS IT FAILED TO NOTIFY THE APPELLANT OF HIS DUTIES AND DURATION TO REGISTER AS A SEX OFFENDER.”

I., II.

{¶18} We dismiss this appeal for lack of jurisdiction because the appeal is untimely.

{¶19} Appellant's notice of appeal was filed on August 22, 2011 and purports to appeal the trial court's entry of August 2, 2011. However, appellant's numerous motions for resentencing, motions for relief from judgment, and motions for reconsideration are collateral attacks on the trial court's judgment entry of March 11, 2010.

{¶20} None of these motions are substitutes for direct appeal. *See, e.g., State v. Jones*, 5th Dist. No. 2011CA00236, 2012-Ohio-76, ¶ 12; *State v. Adams*, 5th Dist. No. CT2011-0036, 2012-Ohio-17, ¶ 9; *State v. Barcus*, 5th Dist. No. 09 CA 51, 2009-Ohio-3388, ¶ 31. Appellant's August 22, 2011 notice of appeal was filed beyond the requirement of App.R. 4 for the timely filing of an appeal of the trial court's March 11, 2010 judgment entry.

{¶21} Accordingly, we find this court lacks jurisdiction and dismiss the within appeal.

By: Delaney, P.J.

Farmer, J. and

Wise, J. concur.

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HON. PATRICIA A. DELANEY

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HON. SHEILA G. FARMER

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HON. JOHN W. WISE

PAD:kgb

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
ANDREW R. MARTIN	:	
	:	
	:	Case No. CT11-0042
Defendant-Appellant	:	

For the reasons stated in our accompanying Opinion on file, the appeal of the August 2, 2011 judgment of the Muskingum County Court of Common Pleas is dismissed. Costs assessed to Appellant.

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HON. PATRICIA A. DELANEY

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HON. SHEILA G. FARMER

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HON. JOHN W. WISE