

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
-vs-	:	CASE NO. 2017-L-139
DAVID L. TATE,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 15 CR 000085.

Judgment: Appeal dismissed.

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

David Tate, pro se, PID: A673-337, Mansfield Correctional Institution, 1150 North Main Street, Mansfield, OH 44901 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, P.J.

{¶1} On October 26, 2017, appellant, pro se, filed a notice of appeal from a September 25, 2017 judgment entry of the Lake County Court of Common Pleas denying his motion for clarification and motion for resentencing. Appellant's notice of appeal was due to be filed by October 25, 2017, which was not a holiday or a weekend. Thus, his appeal was untimely filed by one day.

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

{¶3} “* * * [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.”

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

{¶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. 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 the appeal in the court of appeals. The movant also shall furnish an additional copy of the notice of appeal and a copy of the motion for leave to appeal to the clerk of the court of appeals who shall serve the notice of appeal and the motions upon the prosecuting attorney.”

{¶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 the appeal, and it is hereby sua sponte dismissed as being untimely.

{¶12} Appeal dismissed.

THOMAS R. WRIGHT, J.,

COLLEEN MARY O'TOOLE, J.,

concur.