

[Cite as *State v. Yates*, 2004-Ohio-4863.]

*****This opinion was vacated and replaced with the opinion at *State v. Yates*, 2004-Ohio-5015.*****

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	CASE NO. 2004-A-0042
- VS -	:	
DARREN M. YATES,	:	
Defendant-Appellant	:	

Criminal Appeal from Ashtabula County Court of Common Pleas, Case No. 01 CR 209.

Judgment: Appeal dismissed.

Thomas L. Sartini, Ashtabula County Prosecutor, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Darren M. Yates, pro se, PID NO. 460-975, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030-8000 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶ 1} This matter is before this Court on the motion of appellee, State of Ohio, to dismiss this appeal as untimely. No response has been filed by appellant. On June 15, 2004, appellant, Darren M. Yates, filed notice of appeal from an April 2, 2002 judgment entry of the Ashtabula County Court of Common Pleas and from a May 31, 2002 judgment entry of the Ashtabula County Court of

Common Pleas. In the April 2, 2002 judgment, appellant was found guilty of burglary. In the May 31, 2002 judgment, appellant was sentenced to two and one-half years probation and restitution. Appellant's notice of appeal was filed approximately two years after judgment had been issued by the trial court.

{¶ 2} App.R. 4(A) states:

{¶ 3} "A party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure."

{¶ 4} App.R. 5(A) provides, in relevant part:

(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:

{¶ 5} "(a) Criminal proceedings;

{¶ 6} "(b) Delinquency proceedings; and

{¶ 7} "(c) Serious youthful offender proceedings.

{¶ 8} "(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."

{¶ 9} In this appeal, appellant has neither complied with the thirty-day rule set forth in App.R. 4(A), nor did he seek leave to appeal. Appellant has,

however, filed a separate appeal from the same judgment entry. That appeal has been designated as 11th Dist App. No. 2004-A-0028. Accompanying that appeal was a motion to file a delayed appeal and that motion is being addressed within that appeal. Hence, this appeal could also be dismissed for being a duplicate.

{¶ 10} Based on the foregoing analysis, appellee's motion to dismiss this appeal is hereby granted.

Appeal dismissed.

WILLIAM M. O'NEILL, J.,
DIANE V. GRENDALL, J.,
concur.