

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
-VS-	:	CASE NO. 2008-L-012
JAMES E. PESCI,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 98 CR 000578.

Judgment: Appeal dismissed.

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

James E. Pesci, pro se, PID: 385-424, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44430-8000 (Defendant-Appellant).

TIMOTHY P. CANNON, J.,

{¶1} On January 22, 2008, appellant, James E. Pesci, pro se, filed a notice of appeal from a December 14, 2007 judgment of the Lake County Court of Common Pleas denying his motion to vacate a void judgment, construed by the trial court as a petition for post-conviction relief.

{¶2} Under App.R. 4(A), appellant's notice of appeal was due to be filed no later than Monday, January 14, 2008, which was not a holiday or a weekend. Thus, his appeal filed on January 22, 2008, was untimely.

{¶3} App.R. 4(A) states:

{¶4} “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 rule period in Rule 58(B) of the Ohio Rules of Civil Procedure.”

{¶5} Loc.R. 3(D)(2) of the Eleventh District Court of Appeals provides:

{¶6} “In the filing of a Notice of Appeal in civil cases in which the trial court clerk has not complied with Ohio Civ.R. 58(B), *and the Notice of Appeal is deemed to be filed out of rule*, appellant shall attach an affidavit from the trial court clerk stating that service was not perfected pursuant to Ohio App.R. 4(A). The clerk shall then perfect service and furnish this Court with a copy of the appearance docket in which date of service has been noted. Lack of compliance shall result in the *sua sponte* dismissal of the appeal under Ohio App.R. 4(A).” (Emphasis sic.)

{¶7} Here, appellant has not complied with the thirty-day rule set forth in App.R. 4(A) nor has appellant alleged that there was a failure by the trial court clerk to comply with Civ.R. 58(B). The time requirement is jurisdictional in nature and may not be enlarged by an appellate court. *State ex rel. Pendell v. Adams Cty. Bd. of Elections* (1988), 40 Ohio St.3d 58, 60; App.R. 14(B).

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

{¶9} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,

COLLEEN MARY O'TOOLE, J.,

concur.