

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

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|----------------------|---|-----------------------------|
| STATE OF OHIO, | : | MEMORANDUM OPINION |
| Plaintiff-Appellee, | : | |
| - vs - | : | CASE NO. 2011-T-0003 |
| RAYMOND DE CAPITO, | : | |
| Defendant-Appellant. | : | |

Criminal Appeal from the Court of Common Pleas, Case No. 09 CR 503.

Judgment: Appeal dismissed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Raymond De Capito, pro se, PID: 581-270, 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 appeal from a judgment entry issued by the Trumbull County Court of Common Pleas on December 3, 2010, which denied appellant's motion for jail time credit. Appellant filed his notice of appeal in the trial court on January 6, 2011.

{¶2} On January 18, 2011, appellee filed a motion to dismiss the appeal as being untimely pursuant to App.R. 4(A). Appellant filed a response in opposition to the motion to dismiss on January 28, 2011.

{¶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 ***.”

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

{¶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.”

{¶11} In his pro se response to the motion to dismiss, appellant asserts that he “sent out the notice of appeal on December 28, 2010,” which was “well within the time requirements of the Ohio Rules of Appellate Procedure.” Further, appellant cites App.R. 14(C) to support that he had an additional three days for filing his notice of appeal after service by mail. As appellee correctly notes in its motion to dismiss, the time requirement for filing a notice of appeal under App.R. 4(A) is jurisdictional 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). Filing a notice of appeal within thirty days from the date of the judgment or order appealed is a requirement for this court's jurisdiction to be invoked. App.R. 14(C) does not apply. However, in criminal cases, App.R. 5(A) applies, and an appellant has the option to request leave to file a delayed appeal when the thirty-day time period for filing the notice of appeal has expired.

{¶12} In the present case, appellant has neither complied with the thirty-day rule set forth in App.R. 4(A) nor sought leave to appeal under App.R. 5(A). Thus, this court is without jurisdiction to consider this appeal.

{¶13} Based upon the foregoing analysis, it is ordered that appellee's motion to dismiss is granted, and this appeal is hereby dismissed as being untimely.

{¶14} Appeal dismissed.

TIMOTHY P. CANNON, J.,
THOMAS R. WRIGHT, J.,
concur.