

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

STATE OF OHIO,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellee,	:	
-vs-	:	<b>CASE NO. 2011-P-0074</b>
SAM J. TALAMEH,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Municipal Court, Ravenna Division, Case No. R2003 CRB 65

Judgment: Appeal dismissed.

*Victor V. Vigluicci*, Portage County Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

*David A. Freeburg and Katheryn J. McFadden*, McFadden & Freeburg Co., L.P.A., 1370 Ontario Street, Suite 600, Cleveland, OH 44111 (For Defendant-Appellant).

MARY JANE TRAPP, J.,

{¶1} On August 26, 2011, appellant, by and through counsel, filed a notice of appeal from a July 26, 2011 trial court entry denying his motion for an expungement. An appeal of that entry was due no later than August 25, 2011. Thus, the appeal is untimely by one day.

{¶2} App.R. 4(A) states in part:

{¶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. \*\*\*”

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

{¶5} “(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:

{¶6} “(a) Criminal proceedings;

{¶7} “(b) Delinquency proceedings; and

{¶8} “(c) Serious youthful offender proceedings.

{¶9} “(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 appeal with the court of appeals. \*\*\*”

{¶10} 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 pursuant to App.R. 5(A). The time requirement is jurisdictional. *State ex rel. Pendell v. Adams Cty. Bd. of Elections* (1988), 40 Ohio St.3d 58, 60.

{¶11} Appellant has a remedy to file an untimely appeal from a criminal judgment under App.R. 5(A).

{¶12} This appeal is dismissed, sua sponte, pursuant to App.R. 4(A).

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J., concur.