

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
-vs-	:	CASE NO. 2019-T-0068
CHARLES RICHARD ELLIS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 2018 CR 00760.

Judgment: Appeal dismissed.

Dennis Watkins, Trumbull County Prosecutor, and *Ashleigh Musick*, Assistant Prosecutor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Charles Richard Ellis, pro se, PID# A763-540, Lorain Correctional Institution, 2075 South Avon Belden Road, Grafton, OH 44044 (Defendant-Appellant).

MATT LYNCH, J.

{¶1} On September 30, 2019, appellant, Charles Richard Ellis, filed a pro se notice of appeal. On the notice, he indicates that he is appealing from a September 19, 2019 judgment entry. There is no September 19 entry on the court docket, but the last judgment entered is the trial court's July 31, 2019 sentencing entry.

{¶2} Appellee, the state of Ohio, filed a motion to dismiss the appeal as being untimely on October 3, 2019.

{¶3} App.R. 4(A)(1) states in part:

{¶4} “* * * [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.”

{¶5} Appellant's notice of appeal of the July 31, 2019 entry was due no later than August 30, 2019, which was not a holiday or a weekend. Thus, the appeal is untimely filed by 31 days.

{¶6} App.R. 5(A)(1) states, in relevant part:

{¶7} “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:

{¶8} “(a) Criminal proceedings;

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

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

{¶11} “(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. * * *”

{¶12} 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. Thus, this court is without jurisdiction to consider the appeal. Appellant has a remedy under App.R. 5(A) to file an untimely appeal from a criminal judgment.

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

CYNTHIA WESTCOTT RICE, J.,

TIMOTHY P. CANNON, J.,

concur.