

[Cite as *State v. Monroe*, 2012-Ohio-239.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 10AP-839
	:	(C.P.C. No. 04CR-01-296)
Louis P. Monroe,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on January 24, 2012

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Louis P. Monroe, pro se.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Defendant-appellant, Louis P. Monroe ("appellant"), appeals from a judgment entered by the Franklin County Court of Common Pleas denying his "Motion to Correct Sentence/Resentencing." Because the appeal is untimely pursuant to the jurisdictional requirements set forth in App.R. 4(A) and R.C. 2505.07, we dismiss the appeal.

{¶2} Appellant was indicted on January 16, 2004 on the following charges: aggravated murder with a repeat violent offender specification, tampering with evidence, and domestic violence. On February 7, 2005, appellant pled guilty to one count of

murder, an unclassified felony. On that same date, appellant was sentenced to a period of incarceration of 15 years to life. The following day, the trial court filed a judgment entry journalizing the sentence. The judgment entry states that the court notified appellant, orally and in writing of the applicable periods of post-release control pursuant to R.C. 2929.19.

{¶3} Appellant did not file a direct appeal or a post-conviction petition pursuant to R.C. 2953.21 following his guilty plea. However, during his period of incarceration, appellant has filed various other motions and appeals. In February 2006, appellant filed a motion to withdraw guilty plea, which was denied by the trial court in April 2006. An untimely appeal from that judgment was filed in this court, which resulted in a dismissal. See *State v. Monroe* (July 21, 2006), 10th Dist. No. 06AP-554 (Entry of Dismissal). Appellant then filed a motion for delayed appeal, which was also denied. See *State v. Monroe* (Aug. 18, 2006), 10th Dist. 06AP-554 (Journal Entry). On October 28, 2008, appellant filed a motion in the trial court entitled "Common-Law Motion for Relief From Judgment or Order." On November 17, 2008, the trial court denied that motion. Appellant appealed that denial and we affirmed the trial court's judgment on May 19, 2009. See *State v. Monroe*, 10th Dist. No. 08AP-1062, 2009-Ohio-2343.

{¶4} On February 22, 2010, appellant filed a motion to correct sentence/resentencing, claiming his sentence is void because the sentencing entry imposed a period of post-release control for his murder conviction, a conviction which is not, by law, subject to post-release control. As a result, appellant further argued he should be resentenced. On July 28, 2010, the trial court denied appellant's motion to correct

sentence/resentencing. This appeal was subsequently filed on September 3, 2010.

Appellant has asserted a single assignment of error for our review:

The trial court abused its discretion and failed to follow clearly established law when it denied Appellant's motion to be resentenced as a result of a void sentence.

{¶5} As an initial matter, we must first address plaintiff-appellee, State of Ohio's ("the State") motion to dismiss, filed October 28, 2010, in which the State moves to dismiss this appeal, arguing appellant's notice of appeal was filed beyond the 30-day jurisdictional deadline set forth in App.R. 4(A) and R.C. 2505.07. Appellant did not file anything in response to the State's motion to dismiss and, therefore, has made no arguments challenging the State's contention that the appeal was untimely filed.

{¶6} In calculating the period of time between the date the judgment entry was filed (July 28, 2010) and the date appellant filed his notice of appeal (September 3, 2010), we calculate 37 days. This is clearly beyond the 30-day time limit set forth in App.R. 4(A) and R.C. 2505.07, which establish the time for perfecting an appeal.

{¶7} Pursuant to App.R. 4(A), in order to vest this court with jurisdiction over his appeal, appellant was required to file a notice of appeal within 30 days of the trial court's judgment. *State v. Berry*, 10th Dist. No. 11AP-35, 2011-Ohio-3931, ¶8. In addition, the requirement set forth in R.C. 2505.07 is also jurisdictional, not simply procedural. *Deaconess Hosp. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 11AP-259, 2012-Ohio-95, ¶15, citing *Roberts v. Pleasant Local School Dist. Bd. of Edn.*, 3d Dist. No. 9-11-04, 2011-Ohio-4560, ¶13.

{¶8} Because appellant did not file his notice of appeal within 30 days of the filing of the entry of judgment from which he has appealed, we lack jurisdiction to consider

his assignment of error. *Berry* at ¶9. See also *Americare Corp. v. Misenko* (1984), 10 Ohio St.3d 132, 135 (concluding the dismissal of an appeal where the notice was not filed within 30 days of the entry of judgment was proper); *In re H.F.*, 120 Ohio St.3d 499, 2008-Ohio-6810, ¶17 (failure to timely comply with App.R. 4(A) is a fatal jurisdictional defect); *Bond v. Canal Winchester*, 10th Dist. No. 07AP-556, 2008-Ohio-945, ¶11 (the timing requirement in App.R. 4(A) is mandatory and jurisdictional; thus, failure to comply is fatal to the appeal).

{¶9} Accordingly, the State's motion to dismiss is granted and we dismiss the appeal for lack of jurisdiction.

*Motion to dismiss granted;
appeal dismissed.*

BRYANT and TYACK JJ., concur.
