

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2003-P-0132
THOMAS MAXWELL,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 99 CR 0251.

Judgment: Appeal dismissed.

Victor V. Viglucci, Portage County Prosecutor and *Pamela J. Holder*, Assistant Prosecutor, 466 South Chestnut Street, Ravenna, OH, 44266 (For Plaintiff-Appellee).

Thomas Maxwell, pro se, PID 387-128, Mansfield Correctional Institution, P.O. Box 788, Mansfield, OH, 44901 (Defendant-Appellant).

WILLIAM M. O'NEILL, J.

{¶1} On December 17, 2003, appellant, Thomas Maxwell, filed a notice of appeal from a November 12, 2003 judgment of the Portage County Court of Common Pleas. Thus, appellant's notice of appeal was filed thirty-five days after the judgment had been issued by the trial court.

{¶2} On January 15, 2004, appellant filed a motion to dismiss his appeal due to lack of jurisdiction. He admitted that the appeal had been untimely filed and acknowledged that this court was without jurisdiction to hear the appeal.

{¶3} Surprisingly, appellee, state of Ohio, filed a response to appellant's motion in which it requested that appellant's motion be denied as neither party would suffer prejudice due to the "minor delay."

{¶4} On January 29, 2004, appellant filed a reply to appellee's response, in which he stated that while he would be more than willing to proceed with his appeal, he was of the belief that his tardiness acted as a complete bar to this court proceeding with this appeal due to lack of jurisdiction.

{¶5} Appellant is not only candid, but he is correct.

{¶6} App.R. 4(A) states:

{¶7} "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 period in Rule 58(B) of the Ohio Rules of Civil Procedure."

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

{¶9} "(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:

{¶10} "(a) Criminal proceedings;

{¶11} "(b) Delinquency proceedings; and

{¶12} "(c) Serious youthful offender proceedings.

{¶13} “(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.”

{¶14} Accordingly, appellant’s motion to dismiss this appeal is hereby granted pursuant to App.R. 4(A).

{¶15} The appeal is dismissed.

Appeal dismissed.

DONALD R. FORD, P.J., and JUDITH A. CHRISTLEY, J., concur.