

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
-vs-	:	CASE NO. 2010-A-0031
ROBERT LEE TURNER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 00 CR 124.

Judgment: Appeal dismissed.

Thomas L. Sartini, Ashtabula County Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Wendi L. Overmyer and Carlos Warner, Office of the Federal Public Defender, 50 South Main Street, #700, Akron, OH 44308 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.,

{¶1} On June 24, 2010 appellant, Robert Lee Turner, filed his notice of appeal, from a May 24, 2010 judgment entry of the Ashtabula County Court of Common Pleas. The entry denied his motion to vacate judgment.

{¶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} In this case, appellant's notice of appeal was due by Wednesday, June 23, 2010, which was not a holiday or a weekend. The notice of appeal was not filed until Thursday, June 24, 2010. Thus, the notice was filed one day late.

{¶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. 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. ***"

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

{¶12} Based upon the foregoing analysis, this appeal is hereby sua sponte dismissed as being untimely.

{¶13} Appeal dismissed.

COLLEEN MARY O'TOOLE, J.,

TIMOTHY P. CANNON, J., concur.