

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

STATE OF OHIO,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2014-A-0079</b>
W.D. HENTON,	:	
Defendant-Appellant.	:	

Criminal appeal from the Court of Common Pleas, Case No. 2012 CR 00312.

Judgment: Appeal dismissed.

*Nicholas A. Iarocci*, Ashtabula County Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

*W.D. Henton*, pro se, PID: A651-180, Belmont Correctional Institution, P.O. Box 540, 68518 Bannock Road, St. Clairsville, OH 43950 (Defendant-Appellant).

THOMAS R. WRIGHT, J.,

{¶1} This matter is before this court upon appellant's December 17, 2014, pro se, "32.(B)(1) Notification of right right (sic) to appeal (2)(3)(a)(b)(c)(d)." For purposes of disposition, we construe appellant's pro se pleading as a notice of appeal; however, no proper notice of appeal has been filed. Appellant references that he is appealing from a November 12, 2014 judgment of the trial court which denied his pro se "Plea Error" motion.

{¶2} On January 14, 2015, appellee filed a motion to dismiss the appeal as being untimely pursuant to App.R. 4(A). No brief or memorandum in opposition to the motion to dismiss has been filed.

{¶3} App.R. 4(A) states:

{¶4} “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 \*\*\*.”

{¶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 the appeal in the court of appeals. The movant also shall furnish an additional copy of the notice of appeal and a copy of the motion for leave to appeal to the clerk of the court of appeals who shall serve the notice of appeal and the motions upon the prosecuting attorney.”

{¶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 under App.R. 5(A). Thus, this court is without jurisdiction to consider this appeal.

{¶12} Based upon the foregoing analysis, it is ordered that appellee's motion to dismiss is granted, and this appeal is hereby dismissed as being untimely. Appellant may refile this appeal seeking leave pursuant to App.R. 5.

{¶13} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,

COLLEEN MARY O'TOOLE, J.,

concur.