

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
-vs-	:	CASE NO. 2019-A-0085
CODY J. YOUNG,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Ashtabula County Court of Common Pleas, Case No. 2016 CR 00462.

Judgment: Appeal dismissed.

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

Cody J. Young, pro se, PID# A694-083, Lebanon Correctional Institution, 3791 State Route 63, P.O. Box 56, Lebanon, OH 45036 (Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} On December 2, 2019, appellant, Cody J. Young, filed a pro se notice of appeal from the trial court’s October 28, 2019 entry overruling his motion to vacate void sentence.

{¶2} A timely notice of appeal from the October 28 entry was due on or before November 27, 2019. Thus, the appeal is untimely filed by 5 days.

{¶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} 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. * * *”

{¶11} 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.

{¶12} The appeal is hereby sua sponte dismissed as being untimely.

THOMAS R. WRIGHT, J.,

MARY JANE TRAPP, J.,

concur.