

[Cite as *State v. Jones*, 2012-Ohio-76.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RYAN G. JONES

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 2011CA00236

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Criminal Division, Case
No. 2011CR00022

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

January 9, 2012

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

(¶1) Defendant-appellant Ryan G. Jones appeals the October 4, 2011 Judgment Entry entered by the Stark County Court of Common Pleas, denying his Motion for Relief from Judgment. The State of Ohio is plaintiff-appellee.

STATEMENT OF THE CASE¹

(¶2) Appellant pled guilty to one count of illegal manufacture of drugs in the vicinity of a child, a violation of R.C. 2925.04(A), and one count of illegal assembly or possession of chemicals for the manufacture of drugs in the vicinity of a child, a violation of R.C. 2925.041(A). Appellant was sentenced via Judgment Entry filed February 28, 2011. Appellant did not file a direct appeal.

(¶3) On August 1, 2011, Appellant filed a petition for post-conviction relief (“PCR”) asserting the two counts for which he was convicted and sentenced were allied offenses of similar import.

(¶4) The trial court denied Appellant’s PCR petition via Judgment Entry filed September 8, 2011. Appellant responded by filing a Motion for Relief from Judgment on September 28, 2011. The trial court summarily denied that motion via Judgment Entry filed October 4, 2011. It is from the latter entry Appellant prosecutes this appeal, assigning as error:

(¶5) “I. TRIAL COURT ABUSED ITS DISCRETION WHEN DENYING RELIEF FROM JUDGMENT.”

(¶6) This case comes to us on the accelerated calendar governed by App.R. 11.1, which states the following in pertinent part:

(¶7) “(E) **Determination and judgment on appeal**

¹ A rendition of the facts is unnecessary for our disposition of this appeal.

(¶8) “The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.

(¶9) The decision may be by judgment entry in which case it will not be published in any form.”

(¶10) We dismiss this appeal for lack of jurisdiction. We find Appellant’s appeal is untimely.

(¶11) Appellant’s notice of appeal was filed October 19, 2011. While it asserts it is appealing the trial court’s October 4, 2011 Judgment Entry, it is a collateral attack of the trial court’s September 8, 2011 Judgment Entry.

(¶12) A motion for relief from judgment is not a substitute for a direct appeal. Appellant’s October 19, 2011 Notice of Appeal was filed beyond the requirement of App.R. 4 for the timely filing of an appeal of the trial court’s September 8, 2011 Judgment Entry. Accordingly, we find this court lacks jurisdiction and dismiss Appellant’s appeal.

By: Hoffman, P.J.

Wise, J. and

Edwards, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

