

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 09CA0055

Appellee

v.

CHARLES DYSON

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 09-CR-0031

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 29, 2010

MOORE, Judge.

{¶1} Appellant, Charles Dyson, appeals from the judgment of the Wayne County Court of Common Pleas. This Court dismisses the appeal in part, and affirms his conviction.

I.

{¶2} On January 20, 2009, the Wayne County Grand Jury indicted Dyson on two counts of rape in violation of R.C. 2907.02(A)(1)(b), felonies of the first degree. At the time of the incidents, the victim was eleven years old. On April 23, 2009, Dyson pleaded guilty to the first count in the indictment; the second count was dismissed. That same day, the trial court sentenced Dyson to a term of ten years to life imprisonment. The court designated him a Tier-III sex offender.

{¶3} On August 3, 2009, Dyson filed a motion to dismiss for delay in trial. On August 24, 2009, the trial court denied the motion.

{¶4} Dyson timely filed a notice of appeal. He has raised five assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

“THE TRIAL COURT ERRED TO THE PREJUDICE OF [DYSON] BY ENTERING A JUDGMENT THAT IMPOSED A SENTENCE OF 10 YEARS TO LIFE WITHOUT MAKING THE FINDINGS REQUIRED BY R.C. 2929.14[.]”

ASSIGNMENT OF ERROR II

“THE TRIAL COURT ERRED TO THE PREJUDICE OF [DYSON] BY ENTERING A JUDGMENT OF CONVICTION FOR RAPE WHERE THE STATE FAILED TO PROVIDE SUFFICIENT EVIDENCE OF RAPE.”

ASSIGNMENT OF ERROR III

“THE TRIAL COURT ERRED TO THE PREJUDICE OF [DYSON] BY NOT HIRING AN EXPERT TO PERFORM DNA ANALYSIS.”

ASSIGNMENT OF ERROR V

“THE TRIAL COURT ERRED TO THE PREJUDICE OF [DYSON] BY ENTERING A JUDGMENT OF CONVICTION WHEN THE EVIDENCE WAS INSUFFICIENT AS A MATTER OF LAW AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE PROVIDED TO SUSTAIN A CONVICTION THAT [DYSON] COMMITTED THE CRIME OF RAPE.”

{¶5} In his first assignment of error, Dyson contends that the trial court erred in sentencing him to ten years to life imprisonment without making the findings required by R.C. 2929.14. In his second and fifth assignments of error, Dyson contends that the trial court erred by entering a judgment of conviction that was supported by insufficient evidence and against the manifest weight of the evidence. In his third assignment of error, Dyson contends that the trial court erred when it failed to provide a defense expert to perform DNA analysis. Because his appeal on these issues is untimely, we do not have jurisdiction to reach the merits of these assignments of error.

{¶6} App.R. 3(A) provides that: “An appeal as of right shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4.” App.R. 4(A) provides that: “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[.]” This Court has previously recognized that “[t]his time requirement is jurisdictional and may not be extended. Where an untimely appeal has been filed, an appellate court lacks jurisdiction to consider the merits[.]” (Citations omitted.) *Metropolitan Bank & Trust Co. v. Roth*, 9th Dist. No. 21174, 2003-Ohio-1138, at ¶15, quoting *Rundle v. Rundle* (1997), 123 Ohio App.3d 304, 305-06.

{¶7} Dyson’s first, second, third and fifth assignments of error stem from his April 23, 2009 plea and conviction. The judgment entry containing his conviction and sentence was filed on this date. He did not, however, file his notice of appeal until September 10, 2009. Dyson filed this appeal well beyond the time limit provided in App.R. 4. Therefore, we do not have jurisdiction to consider the merits of these assignments of error.

ASSIGNMENT OF ERROR IV

“THE TRIAL COURT ERRED TO THE PREJUDICE OF [DYSON] BY
DENYING HIS MOTION TO DISMISS FOR DELAY IN TRIAL.”

{¶8} In his fourth assignment of error, Dyson contends that the trial court erred by denying his motion to dismiss for delay in trial. We do not agree.

{¶9} On April 23, 2009 Dyson pleaded guilty to one count of rape. The trial court sentenced him that day. The Supreme Court of Ohio has held that “where an accused has entered a plea of guilty he waives his right to raise the denial of his right to a speedy trial on appeal.” *State v. Kelley* (1991), 57 Ohio St.3d 127, 130, citing *Montpelier v. Greeno* (1986), 25 Ohio St.3d 170. Accordingly, Dyson’s fourth assignment of error is overruled.

III.

This Court lacks jurisdiction to consider the merits of Dyson's first, second, third and fifth assignments of error. Dyson's fourth assignment of error is overruled. We affirm the judgment of the Wayne County Court of Common Pleas.

Appeal dismissed in part,
and judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

WHITMORE, J.
BELFANCE, P. J.
CONCUR

APPEARANCES:

CHARLES DYSON, pro se, Appellant.

MARTIN FRANTZ, Prosecuting Attorney and LATECIA E. WILES, Assistant Prosecuting Attorney, for Appellee.