

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

CASE NO. 22-0877

Appellee

vs.

JOSEPH COLLICA

Appellant.

On Appeal From the Portage
County Court of Appeals,
Eleventh Appellate District

Court of Appeals
Case No. 2022-P-0026

**STATE OF OHIO'S RESPONSE IN OPPOSITION TO
APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION**

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**THIS CASE DOES NOT PRESENT AN ISSUE OF PUBLIC OR GREAT GENERAL
INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL
QUESTION WARRANTING JURISDICTION FROM THIS COURT**

Rather than present this Court with a substantial question or a matter of public or great general interest, Joseph Collica (“Collica”), is seeking jurisdiction in this court because of his dissatisfaction with a memorandum opinion dismissing his untimely filed appeal. As Collica neither filed a timely appeal under App.R. 4(4)(1) nor sought leave to appeal pursuant to App.R. 5(A), the Eleventh District Court of Appeals was without jurisdiction to consider Collica’s appeal. *State v. Collica*, 11th Dist. Portage No. 2022-P-0026, 2022-Ohio-2000, ¶ 6. Jurisdiction from this Court is not warranted.

STATEMENT OF THE CASE

This memorandum arises from the Eleventh District Court of Appeals opinion dismissing an untimely filed appeal from a decision of the Portage County Court of Common Pleas. *Id.*

Trial Court and Eleventh District Court Proceedings

In 2018, the Portage County Grand Jury indicted Collica on rape, sexual battery and two counts of gross sexual battery. (Transcript of the docket, journal entries and original papers hereinafter “T.d.” 1). On October 2, 2018, Collica pleaded guilty to rape, sexual battery and gross sexual battery of a victim less than thirteen. (T.d. 45, 47). The trial court accepted the parties’ negotiated sentencing agreement finding Collica was a Tier II Sexual Offender and sentenced him to five years in prison for each count to run consecutively for a total of 15 years. (T.d. 47).

On March 22, 2019 Collica filed what was construed as his first motion for a delayed appeal challenging his sentence, complaining witness and trial attorney. (T.d.

51). The Eleventh District Court of Appeals dismissed the appeal and overruled the motion finding the motion procedurally defective. *State v. Collica*, 11th Dist. Portage No. 2019-P-0038, 2021-Ohio-1956, ¶ 9; (T.d. 52). The appellate court's memorandum opinion provided the relevant rule and correct procedural steps to pursue the remedy. *Id.*

In the trial court, Collica moved the court to withdraw his guilty plea on April 11, 2022. (T.d. 52). On April 14, 2022, the trial court overruled the motion finding there was no evidence that Collica's plea was not knowing, voluntary or intelligent made. (T.d. 56). On May 20, 2022, Collica sought a notice of appeal with the Eleventh District Court of Appeals. (T.d. 57). As Collica's appeal was neither timely under App.R. 4(A)(1) nor a proper motion for a delayed appeal under App.R 5(A), the appeal was dismissed. *State v. Collica*, 11th Dist. Portage No. 2022-P-0026, 2022-Ohio-2000, ¶ 7-8. This memorandum in support of jurisdiction followed.

ARGUMENT OPPOSING JURISDICTION

Response to Collica's Two Propositions of Law: Having failed to demonstrate any error with the Eleventh District Court of Appeals' decision, Collica's two propositions of law are without merit.

Collica's propositions of law do not direct this Court to any alleged error with the Eleventh District Court of Appeals' decision. Instead, he merely restates the same argument that he made to the trial court without any consideration of the appellate court's analysis of the legal claim that resulted in the dismissal of his appeal. The appellate court was without jurisdiction to review Collica's case because his appeal was filed beyond the requisite thirty-day rule pursuant to App.R. 4(A)(1).

Collica pursued the underlying appeal and this memorandum pro se. Even though pro se litigants are held to the same rules, procedures, and standards as litigants represented by counsel, the procedural history of this case placed Collica in a unique

position to know the importance of a timely filed appeal. When his 2019 attempt to move the Eleventh District for a delayed appeal was overruled, the opinion provided Collica with the language of the appellate rule and legal steps to seek the procedural remedy. *Collica*, 2019-Ohio-1956 at ¶ 2-8. Here, Collica neither sought a timely appeal nor a motion for delayed appeal. Collica did not avail himself of the procedural remedy outlined in the 2021 opinion. *Id.*

Collica's two proposition of law are without merit. Having failed to demonstrate error with the decision of the Eleventh District Court of Appeals dismissal of his untimely appeal, Collica has not presented grounds warranting jurisdiction from this Court.

CONCLUSION

For the foregoing reasons, this case does not present a substantial constitutional question or a matter of public or great general interest. Therefore, the State requests this Court decline jurisdiction to review Collica's Two Propositions of Law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum has been sent by regular U.S. mail to Joseph J. Collica, Inmate No. A753-774 at Noble Correctional Institution, 15708 McConnellsville Road, Caldwell, Ohio 43724 on this 27th day of July 2022.

/s/ Pamela J. Holder

PAMELA J. HOLDER