

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 112228
 v. :
 :
 TIMOTHY KING, :
 :
 Defendant-Appellant. :
 :

JOURNAL ENTRY AND OPINION

JUDGMENT: DISMISSED
RELEASED AND JOURNALIZED: July 13, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-22-670822-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Alicia Paolucci, Assistant Prosecuting
Attorney, *for appellee*.

Ruth R. Fischbein-Cohen, *for appellant*.

ANITA LASTER MAYS, A.J.:

{¶ 1} Defendant-appellant Timothy King (“King”) files this delayed appeal arising from guilty pleas and convictions for multiple charges. The appeal is hereby dismissed.

I. BACKGROUND AND FACTS

{¶ 2} On June 28, 2022, King pleaded guilty in Cuyahoga C.P. Nos. CR-22-670822 and CR-21-661510 and counsel was assigned for appeal. Although the parties briefed both cases, a notice of appeal has not been filed for Cuyahoga C.P. No. CR-21-661510, and therefore this court lacks jurisdiction. “The timely filing of a notice of appeal is the only jurisdictional requirement for perfecting a valid appeal.” *Perozeni v. Perozeni*, 8th Dist. Cuyahoga No. 111771, 2023-Ohio-1140, ¶ 23, citing *Transamerica Ins. Co. v. Nolan*, 72 Ohio St.3d 320, 649 N.E.2d 1229 (1995), syllabus. Thus, the instant appeal concerns Cuyahoga C.P. No. CR-22-670822 only.

{¶ 3} In that case, King pleaded guilty to: Count 1, attempted abduction, R.C. 2923.02 and 2905.02(A)(1), a fourth-degree felony; and Count 2, gross sexual imposition, R.C. 2907.05(A)(1), a fourth-degree felony, and was advised of registration as a Tier I sex offender. Based on factual distinctions, the parties agreed on the record that the two offenses were not allied offenses of similar import.

{¶ 4} On July 26, 2022, King was sentenced to serve a prison sentence at Lorain Correctional Institution of 18 months on Count 1 and 18 months on Count 2 to run consecutive to each other and to the sentence in Cuyahoga C.P. No. CR-21-661510. King was also declared to be a Tier III sex offender, child victim offender registrant, which required lifetime in-person verification every 90 days.¹

¹ At sentencing, the trial court was advised that the proper classification was Tier III as King was already a Tier II registrant. The Tier III requirements were read to King who confirmed his understanding.

II. ASSIGNMENTS OF ERROR

{¶ 5} King poses five assignment of errors on appeal:

- I. It was error to assess court costs against King.
- II. The harsh sentence against King was unsuitable.
- III. A sentence concurrent to another still constitutes double jeopardy.
- IV. It was error to separately sentence King for abduction and for gross sexual imposition.
- V. It was error to label King as a Tier III sex offender.

III. DISCUSSION

{¶ 6} A copy of the order or judgment being appealed must be attached to the notice of appeal pursuant to Loc.App.R. 3(B)(1). The proper entry was not attached in this case.² “Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal.” *Perozeni*, 8th Dist. Cuyahoga No. 111771, 2023-Ohio-1140, at ¶ 23, quoting App.R. 3(A). *See also* Loc.App.R. 3(B)(1). Thus, where an appellant fails to take any step other than filing a timely notice of appeal, “a court of appeals is vested with discretion to determine whether sanctions, including dismissal, are warranted, and its decision will not be overturned absent an abuse of discretion.” *Id.*, quoting *Transamerica*, at 322, 649 N.E.2d 1229.

{¶ 7} Further, App.R. 16(A)(7) provides:

² The attachment contained excerpts of entries relating to two other individuals.

(A) Brief of the Appellant. The appellant shall include in its brief, under the headings and in the order indicated, all of the following:

* * *

(7) An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

{¶ 8} Thus, King is required under App.R. 16(A)(7) to include the following in his brief: “An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies.” *Baxter v. Thomas*, 8th Dist. Cuyahoga No. 101186, 2015-Ohio-2148, ¶ 55, quoting App.R. 16(A)(7).

{¶ 9} Generally, King has provided legally unsupported fact-based arguments in his five assigned errors without relevant legal citation or statute reflecting the law of Ohio. “An appellate court may disregard an assignment of error pursuant to App.R. 12(A)(2) ‘if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A).’” *Id.*, quoting *Rodriguez v. Rodriguez*, 8th Dist. Cuyahoga No. 91412, 2009-Ohio-3456, ¶ 6.

{¶ 10} It is not the duty of this court to search the record for evidence to support an argument supporting any alleged error. *Id.*, citing *Rodriguez* at ¶ 7. Where an argument exists that supports an assigned error, it is not the duty of this court to “root it out.” *Id.*, quoting *Citta-Pietrolungo v. Pietrolungo*, 8th Dist.

Cuyahoga No. 85536, 2005-Ohio-4814, ¶ 35, quoting *Cardone v. Cardone*, 9th Dist. Summit Nos. 18349 and 18673, 1998 Ohio App. LEXIS 2028 (May 6, 1998).

{¶ 11} Because King has failed to file a notice of appeal for Cuyahoga C.P. No. CR-21-661510, we must dismiss for lack of jurisdiction. Because King has failed to comply with App.R. 3 and 16 for his appeal in Cuyahoga C.P. No. CR-22-670822, in our discretion, we dismiss that appeal.

{¶ 12} The appeal is hereby dismissed.

It is ordered that appellee recover from appellant costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANITA LASTER MAYS, ADMINISTRATIVE JUDGE

MICHAEL JOHN RYAN, J., CONCURS;
LISA B. FORBES, J., DISSENTS (WITH SEPARATE OPINION)

LISA B. FORBES, J., DISSENTING:

{¶ 13} I respectfully dissent from the majority's opinion dismissing this appeal. Rather, in the interest of justice, I would exercise the discretion afforded this court to review Cuyahoga C.P. No. CR-22-670822 on the merits and affirm the decision of the trial court. *See Miller v. MetroHealth Med. Ctr.*, 8th Dist. Cuyahoga No. 104296, 2017-Ohio-653, ¶ 18 (“[I]t is a fundamental tenet of judicial review in Ohio that courts should decide cases on the merits * * *.”).