

OHIO COURT OF APPEALS, ELEVENTH APPELLATE DISTRICT, PORTAGE COUNTY

State v. Smith

2020 Ohio 1443 (Ohio Ct. App. 2020) · No. 2020-P-0020 · Decided April 13, 2020

SUMMARY

The Eleventh District Court of Appeals dismissed Michael A. Smith’s motion for leave to file a delayed criminal appeal. The court found the motion procedurally defective because it did not explain the untimeliness, was not accompanied by a notice of appeal filed in the trial court, and lacked the appealed judgment entry.

CASE DETAILS

COURT	Ohio Court of Appeals, Eleventh Appellate District, Portage County
WRITING FOR THE COURT	Thomas R. Wright, J.; Matt Lynch, J.; Mary Jane Trapp, J.
JURISDICTION	Ohio
DECIDED	April 13, 2020
DOCKET	2020-P-0020
DISPOSITION	dismissed
PROCEDURAL POSTURE	Criminal appeal from the Portage County Court of Common Pleas; the appellant sought leave to file a delayed appeal from a sentence.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Michael A. Smith v. State of Ohio

TOPICS

- appellate procedure
- criminal procedure
- appellate jurisdiction

PRACTICE AREAS

- criminal appellate practice
- delayed appeals
- Ohio appellate procedure

QUESTIONS PRESENTED

1. Whether Smith's motion for leave to file a delayed criminal appeal complied with Ohio Appellate Rule 5(A).

2. Whether the court should dismiss a delayed-appeal motion that lacks reasons for the delay, lacks a concurrently filed trial-court notice of appeal, and does not include the appealed judgment entry.

HOLDINGS

1. A defendant seeking leave to file a delayed criminal appeal must state the reasons for failing to perfect a timely appeal and must concurrently file a notice of appeal with the trial-court clerk and a copy of that notice with the court of appeals.
2. The motion was properly overruled and the matter dismissed because it did not comply with the procedural requirements governing delayed appeals.

KEY QUOTATIONS

“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.” (¶ 5)

“Accordingly, because appellant’s present motion is procedurally defective, it is hereby overruled.” (¶ 7)

FACTUAL BACKGROUND

Michael A. Smith, proceeding pro se, sought to appeal a sentence after the ordinary appeal period had expired. He filed a motion for leave to file a delayed appeal but did not provide reasons for the delay, did not concurrently file a notice of appeal in the trial court, and did not provide the judgment entry from which he sought to appeal.

PROCEDURAL HISTORY

Smith filed a pro se motion in the court of appeals titled "Motion to file Appeal on Sentence," which the court construed as a motion for leave to file a delayed appeal under Ohio Appellate Rule 5(A). He did not file a notice of appeal in the trial court concurrently with the motion, did not state reasons for the untimely appeal, and did not provide the judgment entry being appealed. The court overruled the motion as procedurally defective and dismissed the matter.

DISPOSITION

dismissed

OPINION

PER CURIAM.

[Cite as State v. Smith, 2020-Ohio-1443.] IN THE COURT OF APPEALS ELEVENTH APPELLATE DISTRICT PORTAGE COUNTY, OHIO STATE OF OHIO,: MEMORANDUM OPINION Plaintiff-Appellee,: CASE NO. 2020-P-0020 - vs -: MICHAEL A. SMITH,: Defendant-

Appellant.: Criminal Appeal from the Court of Common Pleas, Case No. 2016 CR 00513. Judgment: Dismissed. Victor V. Vigluicci, Portage County Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Michael A. Smith, pro se, PID# 762-940, Trumbull Correctional Institution, 5701 Burnett Road, P.O. Box 901, Leavittsburg, OH 44430 (Defendant-Appellant). THOMAS R. WRIGHT, J. ¶1 On February 25, 2020, appellant, Michael A. Smith, pro se, filed a “Motion to file Appeal on Sentence,” construed as a motion for leave to file a delayed appeal, pursuant to App.R.

5(A). No notice of appeal was filed in the trial court, and no judgment entry for which appellant appeals was provided. ¶2 App.R. 5(A) provides: ¶3 “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: ¶4 “(a) Criminal proceedings; * * * ¶5 “(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. * * *.” (Emphasis added.) ¶6 In the present case, appellant’s motion is defective for the following reasons: 1) appellant’s motion does not set forth any reasons for filing an untimely appeal; and 2) no notice of appeal was filed in the trial court concurrently with the filing of the motion for leave to appeal in this court.

Further, no appealed judgment entry was provided pursuant to Loc.R. 3(D)(2). ¶7 Accordingly, because appellant’s present motion is procedurally defective, it is hereby overruled. ¶8 We note that appellant is not barred from filing a new motion for leave to file a delayed appeal that complies with the App.R. 5(A) and the local rules of this court by filing a notice of appeal with the trial with an attached judgment entry on appeal. ¶9 This matter is dismissed.

MATT LYNCH, J., MARY JANE TRAPP, J., concur. 2