

**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

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