

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Codey L. Spear
Law Offices of Moseley & Martinez,
LLC
Merrillville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Sierra A. Murray
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jennifer A. Rovy,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 5, 2021

Court of Appeals Case No.
20A-CR-1986

Appeal from the Newton Superior
Court

The Honorable Daniel J. Molter,
Judge

Trial Court Cause No.
56D01-1901-F5-104

Najam, Judge.

Statement of the Case

- [1] Jennifer Rovy appeals her sentence following her conviction for intimidation, as a Level 5 felony, pursuant to a guilty plea. She presents two issues for our review. However, we do not reach the merits of Rovy’s appeal because she did not timely file her notice of appeal.
- [2] We dismiss.

Facts and Procedural History

- [3] On July 1, 2020, Rovy pleaded guilty to intimidation, as a Level 5 felony. Rovy’s plea agreement left sentencing open to the trial court’s discretion. After a sentencing hearing, on August 19, the court sentenced Rovy to four years executed. On September 18, Rovy filed a notice of appeal with the *trial court*. She did not file a notice of appeal with the Clerk of this Court until October 27.

Discussion and Decision

- [4] The State contends that Rovy forfeited her right to appeal her sentence. Indiana Appellate Rule 9 prescribes the procedure for filing a party’s Notice of Appeal with the Clerk. Rule 9(A)(1) states that “[a] party initiates an appeal by filing a Notice of Appeal with the Clerk . . . within thirty (30) days after the entry of a Final Judgment is noted in the Chronological Case Summary.” And Rule 9(A)(5) states that, “[u]nless the Notice of Appeal is timely filed, the right to appeal *shall be forfeited* except as provided by P.C.R. 2.” (Emphasis added). Here, Rovy’s October 27, 2020, notice of appeal of the August 19 sentencing order was not timely filed, and she has forfeited her right to appeal.

[5] As our Supreme Court recently stated,

[a]lthough it is never error for an appellate court to dismiss an untimely appeal, the forfeiture of the right to appeal on timeliness grounds does not deprive the appellate court of jurisdiction to hear the appeal. To reinstate a forfeited appeal, an appellant must show that there are “extraordinarily compelling reasons why this forfeited right should be restored.” [*N.R. v. K.G. (In re) O.R.*]], 16 N.E.3d[965,] 971[(Ind. 2014)]. In *O.R.*—a father’s challenge to the adoption of his child—these extraordinarily compelling reasons included “the constitutional dimensions of the parent-child relationship.” *Id.* at 972. . . . The Court of Appeals also has reinstated a forfeited appeal upon finding that the trial court’s order was “manifestly unjust.” *Cannon v. Caldwell*, 74 N.E.3d 255, 259 (Ind. Ct. App. 2017).

Cooper’s Hawk Indpls., LLC v. Ray, 162 N.E.3d 1097, 1098 (Ind. 2021).

[6] Here, in her reply brief, Rovy concedes that her notice of appeal was not timely filed. She asks that we restore her right to appeal given that her untimely notice of appeal was due to the fault of her court-appointed attorney and not through her own fault. But “to overcome the forfeiture Rule 9(A)(5) requires, much more is needed.” *See id.* Rovy has not shown “extraordinarily compelling reasons” that would compel us to restore her right to appeal. *See id.* Accordingly, we dismiss her appeal.

[7] Dismissed.

Pyle, J., and Tavitas, J., concur.