

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 05AP-1139 (C.P.C. No. 03CR01-391)
Craig Morris,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 6, 2005

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for
appellee.

Craig Morris, pro se.

ON MOTIONS

FRENCH, J.

{¶1} On October 25, 2005, defendant-appellant, Craig Morris, filed a pro se motion for leave to file a delayed appeal, pursuant to App.R. 5(A), motion for appointment of counsel, and motion to prepare transcript at state expense. Plaintiff-appellee, the State of Ohio, opposed appellant's motion. For the following reasons, we deny appellant's motion for leave to file a delayed appeal.

{¶2} Appellant requests leave to appeal from an April 1, 2004 jury verdict and May 24, 2004 judgment entry of the Franklin County Court of Common Pleas, in which appellant was convicted on four counts of felonious assault with specification, in violation of R.C. 2903.11, all felonies of the second degree. Appellant did not appeal that conviction.

{¶3} App.R. 5(A) allows a criminal defendant to file a motion for leave to appeal after the expiration of the 30-day period provided by App.R. 4(A). In such a motion, the defendant must set forth the reasons for his or her failure to perfect an appeal as of right. The defendant has the burden of "demonstrating a reasonable explanation of the basis for failure to perfect a timely appeal." *State v. Cromlish* (Sept. 1, 1994), Franklin App. No. 94APA06-855. The decision to grant or deny a motion for leave to appeal rests within the sound discretion of the court of appeals. *State v. Walden*, Franklin App. No. 05AP-532, 2005-Ohio-3993, at ¶2.

{¶4} In his affidavit, appellant states: "My trial attorney failed to file my appeal after my 'jury trial' so I filed a habeas corpus and the magistrate in [an] entry told me to file a delayed appeal so [as] to exhaust my remed[ies]." In response, appellee presented a copy of appellant's post-conviction petition, which he filed in the trial court in November 2004. In that petition, appellant states that he did not appeal the April 1, 2004 conviction. Thus, appellant has known for at least a full year that no appeal was filed. As the Supreme Court of Ohio has noted, "[l]ack of effort or imagination, and ignorance of the law * * * do not automatically establish good cause for failure to seek timely relief." *State v. Reddick* (1995), 72 Ohio St.3d 88, 91 (affirming denial of application to re-open appeal). Appellant filed the instant motion 17 months after the

trial court's entry and at least 11 months after becoming aware that no appeal had been filed. However, during that same time period, he apparently had sufficient legal knowledge to file a pro se post-conviction petition in the trial court and a pro se habeas corpus action in federal court. Appellant offers no explanation to justify his delay in attempting to file an appeal in this court. The substantial lag in filing his motion for leave to file a delayed appeal, without justifiable explanation, is unreasonable.

{¶5} Accordingly, we deny appellant's motion for leave to file a delayed appeal. Based on our denial of leave, we find moot appellant's motion to appoint counsel and motion to prepare transcript at state expense.

Motion for leave to file delayed appeal denied.

BRYANT and PETREE, JJ., concur.
