

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 08AP-598
	:	(C.P.C. No. 05CR-01-600)
Robert L. Smith,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 28, 2008

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*,
for appellee.

Robert L. Smith, pro se.

ON MOTION FOR LEAVE TO APPEAL.

TYACK, J.

{¶1} Robert L. Smith has filed a motion seeking leave to appeal his conviction journalized September 12, 2005. On that date, Smith entered guilty pleas to 21 of the 42 charges of robbery pending against him. He received a sentence of 20 years of incarceration, which was the joint recommendation of the State of Ohio and Smith, through his counsel.

{¶2} Smith bases his attempt to appeal on a legal theory presented by the recent Supreme Court of Ohio case of *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624. The

Supreme Court of Ohio has recently backed away from the initial holding of *Colon* by granting a motion for reconsideration in that case and has clarified that the proposition of law contained in the syllabus of the initial opinion in *Colon* will be confined to application to the facts of the *Colon* case. Thus, Smith has no new legal theory upon which to base an appeal.

{¶3} Further, Smith has not presented a reasonable explanation for his failure to appeal earlier. His delay of almost three years in attempting to appeal his favorable plea bargain and agreed sentence is a legal block to an appeal under the circumstances.

{¶4} The motion for leave to appeal is denied.

Motion for leave to appeal denied.

KLATT and FRENCH, JJ., concur.
