

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2006-A-0035
ALAN D. FINK,	:	9/29/2006
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2004 CR 446.

Judgment: Appeal dismissed.

Thomas L. Sartini, Ashtabula County Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Alan D. Fink, pro se, PID: 491-097, Mansfield Correctional Institution, P.O. Box 788, Mansfield, OH 44903-0788 (Defendant-Appellant).

DIANE V. GRENDELL, J.,

{¶1} On June 19, 2006, appellant, Alan D. Fink, filed a pro se motion for a delayed appeal, pursuant to App.R. 5(A), from his judgment of conviction and sentence issued by the trial court on August 29, 2005.

{¶2} App.R. 5(A) provides, in relevant part:

{¶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} “(b) Delinquency proceedings; and

{¶6} “(c) Serious youthful offender proceedings.

{¶7} “(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.)

{¶8} Appellant did not file a notice of appeal in the trial court concurrently with the filing of his motion for leave to appeal. See *State v. Weaver* (1997), 119 Ohio App.3d 494.

{¶9} Therefore, his motion is procedurally defective, and he has failed to invoke this Court’s jurisdiction. Accordingly, it is ordered that appellant’s motion for leave to file a delayed appeal is hereby overruled.

{¶10} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,

COLLEEN MARY O’TOOLE, J.,

concur.