

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

STATE OF OHIO,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2005-L-150</b>
ROBERT D. MILLER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 02 CR 000162.

Judgment: Appeal dismissed.

*Charles E. Colson*, Lake County Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

*Robert D. Miller*, pro se, PID: 440-709, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030-8000 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} On September 13, 2005, appellant, Robert D. Miller, filed a motion for leave to appeal his judgment of conviction and sentence entered on November 22, 2002. Thus, appellant's motion was filed over two and one-half years after the judgment was entered by the trial court.

{¶2} Appellee, State of Ohio, filed a memorandum in opposition to appellant's motion on September 20, 2005. Appellant filed a response in opposition to the state's opposition on October 14, 2005.

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

{¶4} “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 in criminal cases, an appeal may be taken only by leave of the court to which the appeal is taken. 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.”

{¶5} In his motion, appellant claims that the reason for failing to perfect a timely appeal is that he has an educational level of an elementary student and, essentially, that his trial counsel took advantage of his inability to read and write sentences and understand the nature of his guilty plea.

{¶6} Given that over two and one-half years elapsed between the time of appellant’s conviction and sentence until the filing of his motion for leave to appeal, it is evident that appellant was not diligent in taking the proper steps to protect his own rights. Further, the reason submitted by appellant as the cause for the delay does not adequately justify waiting that length of time to initiate a direct appeal.

{¶7} Accordingly, it is ordered that appellant’s motion for leave to file a delayed appeal is hereby overruled.

{¶8} Appeal dismissed.

DONALD R. FORD, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.