

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2008-A-0045
JOHN R. MARSH,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 05 CR 408.

Judgment: Appeal dismissed.

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

John R. Marsh, pro se, PID: 503-512, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430-0901 (Defendant-Appellant).

DIANE V. GRENDELL, P.J.,

{¶1} On June 27, 2008, appellant, pro se, filed a motion for leave to file a delayed appeal, pursuant to App.R. 5(A). Appellant appeals from his judgment of conviction and sentence issued by the trial court on April 26, 2006, in which he entered a plea of guilty to the charges of Aggravated Murder (counts one and four); Kidnapping (count eight); and Aggravated Kidnapping (count twelve). All three charges included firearm specifications. The trial court sentenced him to serve life in prison under each count.

{¶2} Appellant's notice of appeal and motion for delayed appeal were filed over two years after the April 26, 2006 judgment was entered by the trial court.

{¶3} Appellee, the state of Ohio, filed its response in opposition to the motion on August 12, 2008, along with a motion for leave to file the response instanter.

{¶4} App.R. 5(A)(1) provides, in relevant part, "[a]fter 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 *** [c]riminal proceedings[.]" App.R. 5(A)(2) states that "[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 asserts the following as his reasons for failing to perfect a timely appeal: 1) the trial court failed to inform him of his appellate rights; therefore, his due process rights were violated; 2) when entering his guilty plea, appellant acted under the influence of sudden passion and a fit of rage and he should have been allowed to withdraw his guilty plea; 3) he is a first-time offender and lacks competence regarding court rules and procedures; 4) he did not knowingly and intelligently waive his right to direct appeal.

{¶6} Given that over two years elapsed between the time of appellant's conviction and sentence until the filing of his motion for delayed appeal, it is evident that appellant was not diligent in taking the proper steps to protect his own rights. In addition, appellant has not offered reasons to justify a delay of over two years in initiating his appeal.

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

{¶8} Appeal dismissed.

MARY JANE TRAPP, J., concurs,

COLLEEN MARY O'TOOLE, J., dissents with a Dissenting Opinion.

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{¶9} I respectfully dissent from the majority.

{¶10} Appellant has a constitutional right to appeal his conviction. *State v. Clark*, 11th Dist. No. 90-P-2211, 1991 Ohio App. LEXIS 2371, at 9-10. In cases wherein someone may be sentenced to life imprisonment on each of three counts of a conviction of murder, the state of Ohio and its taxpayers will be spending their hard earned tax dollars to feed, clothe, house, as well as provide medical care for appellant. I humbly suggest to the majority that we accept the delayed appeal, and review the record before this court to make sure the trial court did not err. There specifically is no time limit for appellant to assert his constitutional right to an appeal. In fact, the rule provides specifically for a delayed appeal if the thirty-day deadline to file its original appeal is missed and it specifically does not set a deadline for this delayed appeal to be filed.

{¶11} This court has an affirmative constitutional and statutory duty to review the trial court for error. We are the constitutional, quality control, and backstop for the citizens of the state of Ohio. By skirting this appeal, as well as others, I humbly submit we are not performing our duties to the best of our statutory and constitutional obligation. Thus, I dissent from the majority.