

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-T-0068
DANIEL J. RACHEL,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 06 CR 755.

Judgment: Appeal dismissed.

Dennis Watkins, Trumbull County Prosecutor, *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

James L. Burdon, 137 South Main Street, #201, Akron, OH 44308 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} On June 30, 2011, appellant, Daniel J. Rachel, filed a motion for delayed appeal, pursuant to App.R. 5(A). Appellant appeals from his judgment issued by the trial court on May 15, 2007, in which he entered a plea of guilty and was sentenced to an aggregate prison term of sixteen years for the offenses of felonious assault, aggravated burglary, kidnapping and aggravated robbery.

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

{¶3} Appellee filed its response in opposition to the motion on July 11, 2011.

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

{¶5} "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 a defendant with leave of the court to which the appeal is taken in the following classes of cases:

{¶6} "(a) Criminal proceedings;

{¶7} "(b) Delinquency proceedings; and

{¶8} "(c) Serious youthful offender proceedings.

{¶9} "(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."

{¶10} In his motion, appellant asserts as his main reasons for failing to file a timely appeal that his trial court counsel "did not discuss the legal issues presented by the imposition of consecutive sentences for the offense of Kidnapping and Aggravated Robbery," and appellant was not aware of the legal prohibition against consecutive sentences for the two offenses until after his family retained Attorney Burdon to review his case. Appellant further asserts that he was not constitutionally protected.

{¶11} Given that over four years had elapsed between the time that appellant was sentenced until the filing of his motion for delayed appeal and notice of appeal, it is evident that appellant was not diligent in taking the proper steps to protect his own

rights. Further, his reasons do not justify the four-year delay in filing his appeal. Thus, appellant's motion for leave to file a delayed appeal is hereby overruled.

{¶12} Appeal dismissed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDALL, J.,

concur.