

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

STATE OF OHIO,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2012-T-0011</b>
CHRISTOPHER PAUL MOORE,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2008 CR 00840.

Judgment: Appeal dismissed.

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

*John A. Boyd*, Tarkowsky-Boyd Law Offices, 3 N. Main Street, Suite 505, Mansfield, OH 44902 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} This matter is before this court on appellee's, the state of Ohio, motion to strike appellant's, Christopher Paul Moore, brief and to dismiss the appeal. Also before this court is Mr. Moore's subsequent self-styled "Counter-motion to Amend Notice of Appeal to a Motion for Delayed Appeal."

{¶2} By way of background, on December 19, 2008, Mr. Moore was indicted on seven counts: tampering with evidence; aggravated burglary; aggravated robbery; two counts of grand theft; using weapons while intoxicated; and involuntary manslaughter. Mr. Moore ultimately entered a guilty plea on October 27, 2009. On January 4, 2010,

the trial court sentenced Mr. Moore to a total prison term of 12 years. Mr. Moore did not appeal his sentence.

{¶3} On June 16, 2011, Mr. Moore filed a motion to vacate and set aside a void sentence. The trial court has not ruled on that motion.

{¶4} On December 12, 2011, Mr. Moore filed a motion for preparation of a complete transcript of proceedings at state's expense and a motion for judgment on the pleadings. On January 25, 2012, the trial court denied both motions. Mr. Moore filed a timely notice of appeal from that entry.

{¶5} Mr. Moore filed his appellate brief on May 23, 2012, asserting four assignments of error. Mr. Moore's first three assignments involve his sentence. The last assignment presents a claim of ineffective assistance of counsel at sentencing. Thus, all of Mr. Moore's assignments of error concern his sentence.

{¶6} Again, however, Mr. Moore did not file a timely notice of appeal from the trial court's January 4, 2010 sentencing entry. Instead, Mr. Moore filed an appeal from the trial court's January 25, 2012 judgment, denying his motion for preparation of a complete transcript of proceedings at state's expense and a motion for judgment on the pleadings. None of Mr. Moore's assignments of error stem from the trial court's January 25, 2012 appealed judgment. Rather, all of his assignments stem from the trial court's January 4, 2010 sentencing entry.

{¶7} As a result, on May 30, 2012, the state filed a motion to strike Mr. Moore's brief and to dismiss the appeal. On June 12, 2012, Mr. Moore filed a response and a "countermotion" to amend his notice of appeal to a motion for delayed appeal. The state filed its response in opposition on that same date. Mr. Moore filed a reply.

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

{¶9} “(1) 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:

{¶10} “(a) Criminal proceedings;

{¶11} “\* \* \*

{¶12} “(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. \* \* \*”

{¶13} In his “countermotion,”<sup>1</sup> Mr. Moore asserts as his reason for failing to perfect a timely appeal that he raised the sentencing deficiencies with the trial court in his motion to vacate and set aside a void sentence, which was filed a year and a half after he was sentenced.

{¶14} Because all of Mr. Moore’s assignments of error concern his sentence, he was required to file a notice of appeal within 30 days of the trial court’s January 4, 2010 sentencing entry. However, he failed to do so.

{¶15} Given the length of time that has passed from the time of Mr. Moore’s January 4, 2010 sentence, until the filing of his February 6, 2012 notice of appeal, it is evident that Mr. Moore was not diligent in taking the proper steps to protect his own rights. In addition, the reason submitted by Mr. Moore as the cause for the delay does not justify waiting two years to initiate a direct appeal of his sentence. Therefore, we

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1. It should be noted that such a “countermotion” may not be employed as a substitute for a formal App.R. 5(A) motion for delayed appeal that is compliant with that rule.

find that Mr. Moore has not satisfied the requirements of App.R. 5(A) even if that motion was properly before us.

{¶16} Accordingly, it is ordered that the state's motion to strike Mr. Moore's brief and to dismiss the appeal is granted to the extent that this appeal is dismissed for lack of jurisdiction. Mr. Moore's "countermotion" to amend his notice of appeal to a motion for delayed appeal is hereby overruled.

{¶17} Appeal dismissed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDALL, J.,

concur.