

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2012-T-0058
JERMAINE MCKINNEY,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 05 CR 948.

Judgment: Appeal dismissed.

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

Jermaine McKinney, pro se, PID: A520-677, Mansfield Correctional Institution, P.O. Box 788, Mansfield, OH 44901 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} This matter is before this court on the pro se motion of appellant, Jermaine McKinney, for leave to file a delayed appeal. Along with his motion, appellant filed his notice of appeal on July 23, 2012. Appellant is appealing the trial court's December 11, 2006 judgment convicting him of two counts of aggravated murder and related offenses following a jury trial.

{¶2} Appellee, the state of Ohio, filed a response in opposition to appellant's motion on August 1, 2012. Appellant filed a "Memorandum Contra" to the state's response on August 10, 2012.

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

{¶4} "(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:

{¶5} "(a) Criminal proceedings;

{¶6} "* * *

{¶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. * * *"

{¶8} This court, and other Ohio courts, have held that an App.R. 5(A) delayed appeal cannot be utilized as a means of maintaining successive appeals from the same judgment. See *State v. Cioffi*, 11th Dist. Nos. 2009-T-0065 and 2009-T-0066, 2009-Ohio-4932, ¶10; *State v. Perry*, 11th Dist. No. 2008-T-0127, 2009-Ohio-1320, ¶5; *State v. Haynes*, 111 Ohio App.3d 244, 245 (10th Dist.1996).

{¶9} In this case, appellant has previously appealed the trial court's December 11, 2006 judgment entry of his conviction and sentence which resulted in a full opinion by this court on the merits. See *State v. McKinney*, 11th Dist. No. 2007-T-0004, 2008-Ohio-3256. Therefore, pursuant to the foregoing cases, the procedure provided for in

App.R. 5(A) is not available to appellant in his present attempt to take a successive appeal from the same judgment which he has already appealed to this court.

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

{¶11} Appeal dismissed.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.