

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2012-L-120
CARL A. LIOTTA,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 07 CR 000039.

Judgment: Appeal dismissed.

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

Albert L. Purola, 38298 Ridge Road, Willoughby, OH 44094 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} This matter is before this court on the motion of appellant, Carl A. Liotta, for leave to file a delayed appeal. Along with his motion, appellant filed his notice of appeal on October 12, 2012. Appellant is appealing the April 17, 2007 judgment of the Lake County Court of Common Pleas, sentencing him to serve 23 years to life in prison for murder, felonious assault, and improperly discharging a firearm into a habitation following a guilty plea. Thus, appellant's appeal was filed over five years after the trial court's judgment.

{¶2} Appellee, the state of Ohio, filed a response in opposition to appellant's motion on October 19, 2012. The state maintains that appellant fails to provide a specific, legitimate reason why he should be afforded a right to a delayed appeal.

{¶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} In his motion, appellant asserts that he failed to perfect a timely appeal because he was indigent and was unable to challenge the effectiveness of his appointed counsel.

{¶9} Given the length of time that has passed from the time of appellant's 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. Also, appellant's stated reason does not justify waiting over five years to initiate a direct appeal. Therefore, we find that appellant has not satisfied the requirements of App.R. 5(A).

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

{¶11} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.