

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

STATE OF OHIO,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2014-L-123</b>
NICHOLAS ZUNDEL,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 13 CR 000139.

Judgment: Appeal dismissed.

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

*Nicholas Zundel*, pro se, PID: A644-512, Marion Correctional Institution, P.O. Box 57,  
940 Marion-Williamsport Road, Marion, OH 43302 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} On December 11, 2014, appellant, Nicholas Zundel, filed a pro se motion for a delayed appeal, pursuant to App.R. 5(A), along with his notice of appeal. Appellant is attempting to appeal his original judgment of conviction and sentence issued by the Lake County Court of Common Pleas on September 24, 2013. Thus, the appeal is untimely by over thirteen months.

{¶2} Appellee, the state of Ohio, filed a response opposing the motion on December 16, 2014.

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

{¶4} “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} “(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.”

{¶7} In his motion, appellant asserts that his trial attorney indicated that he would file his appeal, but he later found out that the attorney did not file an appeal for him. Also, he indicates that he is a layman and does not understand the law regarding appeals.

{¶8} While appellant’s reasons might explain some lapse in time in initiating his direct appeal, they do not justify a delay of over thirteen months between the time of appellant’s conviction and sentence until the filing of his motion for delayed appeal. We find that appellant was not diligent in taking the proper steps to protect his own rights.

{¶9} Thus, appellant’s pro se motion for delayed appeal is hereby overruled, and the appeal is hereby dismissed, sua sponte.

{¶10} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J., concurs,

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

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

{¶11} I respectfully dissent with the majority's position denying appellant's motion for a delayed appeal based on my dissenting opinions in similar matters involving App.R. 5(A). *State v. Christopher*, 11th Dist. Portage Nos. 2013-P-0003, 2013-P-0004, 2013-P-0005, 2013-Ohio-1946, ¶14-22; *State v. Grant*, 11th Dist. Lake No. 2013-L-101, 2014-Ohio-5378, ¶16-25; *State v. Gibbs*, 11th Dist. Geauga No. 2014-G-3201, 2014-Ohio-5772, ¶16-25; *State v. Funk*, 11th Dist. Lake No. 2014-L-094, 2015-Ohio-813, ¶16-24.