

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2015-T-0012
BERNARD RAYMOND STUNTEBECK,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2014 CR 025.

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).

Bernard Raymond Stuntebeck, pro se, PID: A662-580, Lorain Correctional Institution, 2075 South Avon-Belden Road, Grafton, OH 44044 (Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} On February 17, 2015, appellant, Bernard Raymond Stuntebeck, pro se, filed a motion for leave to file a delayed appeal pursuant to App.R. 5(A). No notice of appeal was filed with the trial court. Attached to appellant’s motion for leave is the trial court’s entry of November 17, 2014, convicting and sentencing him to serve ten years in prison after pleading guilty to pandering sexually oriented matter involving a minor and pandering obscenity involving a minor.

{¶2} The state of Ohio filed its objection to appellant's motion on February 20, 2015, requesting the motion be denied and that the appeal be dismissed. This court construes appellee's objection as a motion to dismiss.

{¶3} App.R. 5(A) provides:

{¶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} "(b) Delinquency proceedings; and

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

{¶8} "(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. The movant also shall furnish an additional copy of the notice of appeal and a copy of the motion for leave to appeal to the clerk of the court of appeals who shall serve the notice of appeal and the motions upon the prosecuting attorney.*" (Emphasis added.)

{¶9} In the present case, appellant has not complied with App.R. 5(A) because he failed to file a notice of appeal in the trial court concurrently with the filing of his motion for leave to appeal. See *State v. Fisher*, 46 Ohio App.2d 279 (1975); *State v. Pavisich*, 11th Dist. No. 2014-P-0028, 2014-Ohio-5313.

{¶10} Therefore, appellant's present motion is procedurally defective, and he has failed to invoke this court's jurisdiction.

{¶11} We note that appellant is not barred from filing a new motion for leave to appeal along with a notice of appeal in accordance with the rules of court.

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

{¶13} Appeal dismissed.

DIANE V. GRENDALL, J.,

THOMAS R. WRIGHT, J.,

concur.