

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2015-T-0013
ROSS ALLEN FRANCIS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 12 CR 754.

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).

Ross Allen Francis, pro se, PID: A642-876, Belmont Correctional Institution, P.O. Box 540, 68518 Bannock Road, St. Clairsville, OH 43950 (Defendant-Appellant).

DIANE V. GRENDELL, J.,

{¶1} This matter is before this court on the pro se motion for leave of appellant, Ross Allen Francis, to file a delayed appeal, pursuant to App.R. 5(A). Along with his motion, appellant filed his notice of appeal on February 19, 2015. Appellant appeals from his conviction and sentence of June 14, 2013. That entry indicates that appellant was sentenced by the Trumbull County Court of Common Pleas to an 8-year prison

term after he pleaded guilty to the offenses of kidnapping and grand theft of a motor vehicle.

{¶2} A timely notice of appeal from the June 14, 2013 judgment entry was due no later than July 15, 2013, which is not a weekend or a holiday. Appellant's notice of appeal was not filed until February 19, 2015, over one and a half years beyond the due date.

{¶3} Appellee, the state of Ohio, filed a response in opposition to appellant's motion on February 20, 2015.

{¶4} App.R. 4(A)(1) states, in part:

{¶5} "[A] party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within 30 days of that entry."

{¶6} App.R. 5(A) provides:

{¶7} "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:

{¶8} "(a) Criminal proceedings;

{¶9} "(b) Delinquency proceedings; and

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

{¶11} "(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."

{¶12} Appellant generally asserts in his motion for leave that he did not pursue a timely appeal because he was advised while incarcerated in the county jail that he should pursue his case in the context of a civil action. Further, he believed that if he succeeded in the civil action he could somehow utilize that decision “as a basis for an attack on his criminal case.” Appellant claims that he just discovered that any result from a civil action could not be used as evidence in a criminal action. In addition, appellant indicates that further delay in filing his appeal was due to not being able to get a copy of his sentencing entry. Finally, appellant claims that his delay was caused by his applying to the Supreme Court Disciplinary Counsel and the Trumbull County Bar Association on an ineffective assistance of trial counsel claim.

{¶13} While appellant’s reasons might justify a reasonable time delay in filing his appeal, they do not justify a delay of over one and one-half years in initiating an appeal as of right. It is evident that appellant was not diligent in taking the proper steps to protect his own appellate rights.

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

{¶15} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J., concurs,

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

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{¶16} 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.