

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2016-T-0009
ANTONIO DELSHAWN BAUGH,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2014 CR 00781.

Judgment: Appeal dismissed.

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

Antonio Delshawn Baugh, pro se, PID: A672-902, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Before this court is appellant, Antonio Delshawn Baugh's, pro se motion for leave to file a delayed appeal, pursuant to App.R. 5(A). Along with his motion, appellant filed his notice of appeal in the trial court on February 8, 2016. Appellant appeals from his conviction and sentence of August 19, 2015.

{¶2} A timely notice of appeal from the August 19, 2015 judgment entry was due no later than September 18, 2015, which was not a weekend or a holiday. Therefore, appellant's appeal is untimely by almost five months.

{¶3} Appellee, the state of Ohio, filed its response in opposition to the motion for delayed appeal on February 18, 2016.

{¶4} App.R. 4(A)(1) states in relevant 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} As reasons for failing to file a timely appeal, appellant asserts that neither the trial court nor his trial counsel notified him that he had a right to appointed appellate counsel and to appeal pursuant to Crim.R. 32(B). However, appellee contends in its

response in opposition to the motion that pages 6-7 of the signed plea of June 30, 2015, clearly shows that appellant was apprised of his rights and that he was waiving a right to appeal upon his conviction. In addition, he acknowledged that he understood his limited appellate rights and that he had 30 days to appeal his sentence.

{¶13} A review of the signed plea agreement confirms that appellant was clearly advised of his limited appellate rights by his trial counsel and the court. Thus, appellant's sole reason for filing an untimely appeal has no merit.

{¶14} It is ordered that appellant's pro se motion for leave to file a delayed appeal is hereby overruled.

{¶15} Appeal dismissed.

DIANE V. GRENDELL, 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, and 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.