

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2016-L-088
DAVID V. ROCK,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 1997 CR 000363.

Judgment: Appeal dismissed.

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

David V. Rock, pro se, PID: A663-040, Mansfield Correctional Institution, P.O. Box 788, 1150 North Main Street, Mansfield, OH 44901 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} On August 22, 2016, appellant, David V. Rock, pro se, filed a Motion for Leave to File a Delayed Appeal pursuant to App.R. 5(A).

{¶2} No notice of appeal was filed, and no judgment entry for which appellant is appealing has been provided. However, appellant references his conviction and sentence in his motion.

{¶3} A review of the trial court docket reflects that appellant was convicted and sentenced on April 3, 1998, of driving under the influence of alcohol or drugs and unauthorized use a motor vehicle, after entering a plea of guilty to those charges.

{¶4} Appellee, the state of Ohio, filed a response in opposition to appellant's motion for leave to file a delayed appeal on August 26, 2016.

{¶5} App.R. 5(A) provides:

{¶6} “(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:

{¶7} “(a) Criminal proceedings;

{¶8} “(b) Delinquency proceedings; and

{¶9} “(c) Serious youthful offender proceedings.

{¶10} “(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. * * *.*” (Emphasis added.)

{¶11} Appellant has not complied with App.R. 5(A) because he has 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). In addition, appellant has not complied with Loc.R. 3(D)(2) of this court by attaching to such notice of appeal a copy of the judgment entry being appealed.

{¶12} Further, in addition to the procedural flaws, we note that an appeal from the trial court's entry of April 3, 1998, would have been due to be filed no later than May 4, 1998. Even if appellant had filed a delayed appeal without the procedural deficiencies, the reasons he has asserted in his motion for delayed appeal do not justify a delay of over 18 years in filing his appeal. In addition, appellee asserts in its opposition to the motion that appellant's reason of not being advised of his appellate rights and not being aware of his appellate options is completely untrue because appellant perfected a timely appeal from another trial court case. In *State v. Rock*, 11th Lake Dist. No. 2015-L-047, 2015-Ohio-4639, appellant appealed from a different Lake County case in which he entered a plea of guilty to and was convicted of OVI. Appellant also filed a timely appeal, pro se, in February 2003 from a January 16, 2003 trial court entry in *State v. Rock*, 11th Dist. Lake No. 2003-L-031, which was sua sponte dismissed by this court on June 30, 2003. Also, appellant currently has an appeal pending with this court from another trial court case in 11th Dist. Lake No 2016-L-011. As evidenced by appellant's appellate history, he has some knowledge of the appellate process and his rights.

{¶13} In light of the foregoing, appellant's motion for leave to file a delayed appeal is overruled.

{¶14} This matter is dismissed.

CYNTHIA WESTCOTT RICE, P.J., concurs,

THOMAS R. WRIGHT, J., concurs in judgment only.