

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2016-P-0070
KENNETH L. RALL,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2015 CR 00042.

Judgment: Appeal dismissed.

Victor V. Viglucci, Portage County Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Kenneth L. Rall, pro se, PID: A673-321, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (Defendant-Appellant).

TIMOTHY P. CANNON, J.,

{¶1} This matter is before this court on the pro se motion of appellant, Kenneth L. Rall, to file a delayed appeal. Along with his motion, appellant filed his notice of appeal on November 7, 2016. Appellant appeals the trial court's September 11, 2015 judgment sentencing him to serve an aggregate prison term of 6 years after he entered a guilty plea to trafficking in cocaine, possession of marijuana, aggravated possession of drugs, possession of heroin, and unlawful possession of a dangerous ordnance.

{¶2} Thus, appellant's appeal was filed over a year after his September 11, 2015 conviction and sentence.

{¶3} No brief or memorandum in opposition to the motion has been filed.

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

{¶5} “(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:

{¶6} “(a) Criminal proceedings;

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

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

{¶9} “(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.”

{¶10} App.R. 5(A)(2) contains three requirements an appellant must comply with in order to obtain leave to appeal. The movant shall: (1) file a motion for leave to appeal that sets forth his or her reasons for failing to perfect an appeal as of right; (2) file a notice of appeal with the clerk of the trial court that complies with App.R. 3; and (3) furnish a copy of the notice of appeal and a copy of the motion for leave to appeal to the clerk of the court of appeals.

{¶11} With regard to the first requirement, the precedent of this court is that the reason for failing to perfect an appeal as of right must be valid—i.e., the reason for

delay must justify the length of time it took to initiate an appeal. See, e.g., *State v. Johnson*, 11th Dist. Trumbull No. 2013-T-0121, 2014-Ohio-2015, ¶ 6; *State v. Williams*, 11th Dist. Trumbull No. 2013-T-0034, 2013-Ohio-3481, ¶ 9.

{¶12} As reasons for filing an untimely appeal, appellant asserts: 1) the trial court failed to notify him of this right to appeal; and 2) his trial counsel failed to file an appeal on his behalf and failed to advise him that he had a right to appeal.

{¶13} Given the length of time of nearly thirteen months that has passed from the time of appellant's conviction and sentence until the filing of his motion for delayed appeal, it is evident that appellant was not diligent in taking the proper steps to protect his own rights. Further, the reasons submitted by appellant as cause for delay do not justify waiting that length of time to initiate a direct appeal. Therefore, we find that appellant has not satisfied the requirements of App.R. 5(A).

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

{¶15} Appeal dismissed.

CYNTHIA WESTCOTT RICE, P.J.,

DIANE V. GRENDALL, J.,

concur.