

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2016-L-117
DALE W. BURNS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2015 CR 000083.

Judgment: Appeal dismissed.

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

Dale W. Burns, pro se, PID: A670-635, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, P.J.

{¶1} Appellant filed a motion for leave to file a delayed appeal, pursuant to App.R. 5(A), with this court on November 10, 2016. Then he filed his notice of appeal on December 14, 2016, indicating that he was appealing the trial court's April 16, 2015 entry of conviction and sentence.

{¶2} Appellant entered a plea of guilty to two counts of robbery, and the trial court sentenced him to serve 42 months in prison. His notice of appeal was due no

later than May 18, 2015, which was not a weekend or a holiday. Thus, his appeal is untimely by almost 18 months.

{¶3} Appellee, the state of Ohio, filed its response in opposition to the motion on November 21, 2016.

{¶4} App.R. 5(A)(1) provides:

{¶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} As reasons for failing to file a timely appeal, appellant asserts that he was never notified by the trial court of his right to appeal, his right to assistance of counsel, and his time limits to appeal.

{¶11} In its opposition to the motion, appellee indicates that appellant appeared before the trial court judge and acknowledged in his written plea of guilty that his limited appellate rights were explained to him and that an appeal must be filed within 30 days of the conviction and sentence. Page two, paragraph three, of the March 12, 2015

signed plea states in relevant part: “[m]y attorney has explained my right to appeal a maximum sentence, my other limited appellate rights, and that any appeal must filed within 30 days of the Court’s entry of the judgement (sic) of my sentence.”

{¶12} It appears that appellant was clearly notified of his limited appellate rights. Therefore, his motion has not asserted a valid reason for an almost 18-month delay in perfecting his appeal as of right.

{¶13} For the foregoing reasons, appellant’s motion for leave to file a delayed appeal is hereby overruled.

{¶14} Appeal dismissed.

THOMAS R. WRIGHT, J., concurs,

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

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

{¶15} 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.