

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2016-A-0067
PATRICK G. SPAID,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2008 CR 00290.

Judgment: Dismissed.

Nicholas A. Iarocci, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Patrick G. Spaid, pro se, PID# A690-323, Lorain Correctional Institution, 2075 South Avon-Belden Road, Grafton, OH 44044 (Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} On November 10, 2016, appellant, Patrick G. Spaid, pro se, filed a motion for leave to file a delayed appeal, pursuant to App.R. 5(A). No notice of appeal was filed, and no judgment entry for which appellant appeals from has been provided.

{¶2} Appellee, the state of Ohio, filed a response in opposition to the motion on November 14, 2016.

{¶3} App.R. 5(A) provides:

{¶4} “(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:

{¶5} “(a) Criminal proceedings;

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

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

{¶8} “(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.)

{¶9} In the present case, appellant has not complied with App.R. 5(A) because he 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. Rock*, 11th Dist. Lake No. 2016-L-088, 2016-Ohio-7445; *State v. Torok*, 11th Dist. Ashtabula No. 2015-A-0065, 2016-Ohio-269; *State v. Fisher* (1975), 46 Ohio App.2d 279. In addition, no judgment entry on appeal has been provided pursuant to Loc.R. 3(D)(3) of this court.

{¶10} Accordingly, appellant's present motion for leave to file a delayed appeal is procedurally defective, and he has failed to invoke this court's jurisdiction.

{¶11} We note that appellant is not barred from filing a new motion for leave to appeal that complies with the Ohio Rules of Appellate Procedure and the local rules of this court.

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

{¶13} This matter is dismissed.

CYNTHIA WESTCOTT RICE, P.J., concurs,

DIANE V. GRENDALL, J., concurs in judgment only.