

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2015-L-018
HORACE K. VINSON, JR.,	:	
Defendant-Appellant.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 06 CR 000099.

Judgment: Appeal dismissed.

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

Samuel R. Smith, II, Law Office of Samuel R. Smith, II, 323 West Lakeside Avenue, Suite 420, Cleveland, OH 44113 (For Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} This matter is before the court on appellant, Horace K. Vinson, Jr.'s February 12, 2015 Motion for Leave to File a Delayed Appeal from the December 31, 2014 judgment entry of the Lake County Court of Common Pleas, dismissing his third petition for post-conviction relief, without hearing. Appellee, the State of Ohio, has not filed a response in opposition.

{¶2} In October 2006, Mr. Vinson was sentenced to a lengthy prison term for his conviction, following jury trial, for felonious murder with a firearm, and carrying a concealed weapon. *State v. Vinson*, 11th Dist. Lake No. 2006-L-238, 2007-Ohio-5199, ¶1, 20. On appeal, this court affirmed. *Id.* at ¶1. Thereafter, he filed his first petition for post-conviction relief, alleging trial counsel was ineffective for failing to call two witnesses. *State v. Vinson*, 11th Dist. Lake No. 2007-L-088, 2008-Ohio-3059, ¶15. The trial court denied the petition. *Id.* at ¶1, 16. On appeal, this court affirmed. *Id.* at ¶1, 44.

{¶3} In October 2012, Mr. Vinson filed his second petition for post-conviction relief. He argued that the petition was premised on the decision of the United States Supreme Court in *Lafler v. Cooper*, 132 S.Ct. 1376 (2012), asserting that case recognized a new constitutional right pertaining to ineffective assistance of counsel when a plea offer is rejected, and a defendant is thereafter convicted following trial. Mr. Vinson argued that trial counsel advised him not to accept a deal offered by the state, involving a plea to a charge of manslaughter, with the state to recommend a distinctly shorter sentence than that actually imposed. *State v. Vinson*, 11th Dist. Lake No. 2013-L-015, 2013-Ohio-5826, ¶3. The trial court denied the petition. *Id.* at ¶4, 16. On appeal, this court affirmed. *Id.* at ¶1, 26.

{¶4} In April 2014, Mr. Vinson filed his third petition for post-conviction relief. Mr. Vinson now argues that the state did not disclose exculpatory evidence to him. The trial court held that Mr. Vinson was not unavoidably prevented from discovery of the facts upon which his petition relied and denied the petition. The trial court issued its judgment entry on December 31, 2014 and mailed a Notice of Final Appealable order to Mr. Vinson's attorney on January 2, 2015.

{¶5} App.R. 4(A)(1) requires that a notice of appeal must be filed within thirty days of the entry of a final judgment. Delayed appeals are only available in the classes of cases outlined by App.R. 5(A)(1)(a)-(c):

{¶6} 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: * * * Criminal proceedings; * * * Delinquency proceedings; and * * * Serious youthful offender proceedings.

{¶7} Since post-conviction proceedings are considered quasi-civil in nature, the Ohio Supreme Court has expressly held that an App.R. 5(A) delayed appeal is not available for an appeal of a post-conviction relief determination. *State v. Nichols*, 11 Ohio St.3d 40, 42 (1984).

{¶8} App.R. 4(A)(3) provides that “[i]n a civil case, if the clerk has not completed service of the order within the three-day period prescribed in Civ.R. 58(B), the 30-day periods referenced in App.R. 4(A)(1) and 4(A)(2) begin to run on the date when the clerk actually completes service.”

{¶9} Pursuant to Civ.R. 58(B), “[w]ithin three days of entering the judgment upon the journal, the clerk shall serve the parties in a manner prescribed by Civ.R. 5(B) and note the service in the appearance docket.” Service is complete when the clerk has served the notice and entered a “notation of the service in the appearance docket.” *Id.*

{¶10} A review of the trial court’s docket reveals a notation that on January 2, 2015, “Notice of Final Appealable Order issued to Taylir K. Linden and Samuel R. Smith, II.” Attorney Smith states in the Certificate of Service that he was “just recently retained by Defendant,” hence the Motion for Leave to File a Delayed Appeal. The

circumstances of this case indicate that the clerk took the steps required under the Civil Rules and Mr. Vinson's attorney does not deny receiving the entry.

{¶11} Based on the facts before this court, there is no basis for allowing the delayed appeal. Appellant's Motion for Leave to File a Delayed Appeal is hereby denied.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDALL, J.,