

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2015-T-0077
ONDRE LEE BROWN,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2014 CR 00957.

Judgment: Appeal dismissed.

Dennis Watkins, Trumbull County Prosecutor, *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Ondre Lee Brown, pro se, PID: A671-157, Lorain Correctional Institution, 2075 South Avon Belden Road, Grafton, OH 44044 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} This matter is before this court on the pro se motion for leave of appellant, Ondre Lee Brown, to file a delayed appeal, pursuant to App.R. 5(A). Along with his motion, appellant filed his notice of appeal in the trial court on July 15, 2015. Appellant appeals from his conviction and sentence of May 21, 2015.

{¶2} A timely notice of appeal from the May 21, 2015 judgment entry was due no later than June 22, 2015, which was not a weekend or a holiday. Therefore, appellant's appeal is untimely by 23 days.

{¶3} Appellee filed its response in opposition to the motion for delayed appeal on July 17, 2015.

{¶4} App.R. 4(A)(1) states in relevant part:

{¶5} “* * * [A] party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within 30 days of that entry.”

{¶6} App.R. 5(A) provides:

{¶7} “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:

{¶8} “(a) Criminal proceedings;

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

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

{¶11} “(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.”

{¶12} In his motion, appellant asserts as his primary reason for failing to file a timely appeal is that neither the trial court nor his trial counsel advised him that he had a constitutional right to appointed appellate counsel and to appeal. However, as correctly

indicated in appellee's response in opposition to the motion, page five of appellant's signed plea states: "[m]y attorney has advised me that I may only be able to appeal the imposition of a maximum sentence or other procedural issues regarding this plea. I also understand my other limited appellate rights that have been explained to me by the Court, and that I must file an appeal within thirty (30) days of my sentence. I also understand that under certain circumstances, the State may appeal my sentence." Further, page six of the signed plea states: "I am, therefore, satisfied that I am now entering this plea with full understanding of my legal rights under the facts and circumstances as explained [to] me by my attorney and the Court."

{¶13} We find that appellant's signed plea agreement refutes appellant's reason for filing an untimely appeal. Appellant was clearly advised of his limited appellate rights in entering his guilty plea.

{¶14} Therefore, appellant's pro se motion for leave to file a delayed appeal is hereby overruled.

{¶15} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.