

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2014-G-3240
GARY CALHOUN,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Geauga County Court of Common Pleas, Case No. 88 C 001080.

Judgment: Appeal dismissed.

James R. Flaiz, Geauga County Prosecutor, Courthouse Annex, 231 Main Street, Suite 3A, Chardon, OH 44024 (For Plaintiff-Appellee).

Gary Calhoun, pro se, PID: A205-922, Marion Correctional Institution, P.O. Box 57, 940 Marion-Williamsport Road, Marion, OH 43302 (Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} This matter is before this court on the pro se motion of appellant, Gary Calhoun, for leave to file a delayed appeal pursuant to App.R. 5(A). Appellant filed this motion, along with a notice of appeal, on December 1, 2014. Appellee, the state of Ohio, filed a response in opposition on December 5, 2014. Appellant filed a pro se reply to appellee’s response in opposition on December 31, 2014.

{¶2} On September 30, 1988, appellant entered a plea of guilty to aggravated murder. On October 4, 1988, the Geauga County Court of Common Pleas sentenced appellant to life in prison with eligibility of parole after serving 20 years. It is from that

entry that appellant seeks leave to appeal. Thus, appellant's notice of appeal is untimely by over 26 years.

{¶3} Pursuant to App.R. 4(A)(1), "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.*" (Emphasis added.)

{¶4} App. R. 5(A)(1) provides: "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 * * * (a) [c]riminal proceedings * * *."

{¶5} 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.

{¶6} 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.

{¶7} As his reason for failing to file a timely appeal, appellant asserts:

{¶8} "I never filed an Appeal or any motion in my entire prison time served because I 'Was' satisfied with the sentence given by the Court which specified in the entry that I would be 'eligible' for release after serving 20 years, however the Parole Board, despite the contract entry, is continually (sic) flopping me based on my crime and

not based on my good behavior I have shown, which violates my plea and denied me rights, which include an appeal had I known I was going to be kept in prison despite my end of the contract (good behavior) being upheld and now serving [to date] 26 years.”

{¶9} Rather than asserting reasons for the lengthy delay in filing his direct appeal, appellant contends that, by continually denying him parole, the State is not abiding by his plea agreement thereby violating his rights. Appellant generally indicates that at the time of his plea, it was his understanding that he would be released from prison on good behavior after serving 20 years for his aggravated murder conviction. As to that point, appellee indicates that neither the Transcript of Change of Plea Proceedings nor the sentencing entry made any promises regarding parole. In fact, even though appellant’s plea indicated that he would be eligible for parole after serving 20 years, it also stated that appellant might never be paroled.

{¶10} Appellant has not provided this court, as required by App.R. 5(A), with sufficient reasons to justify waiting over 26 years to initiate either a direct appeal or a motion for leave to file a delayed appeal. Therefore, appellant’s motion for leave to file a delayed appeal is hereby overruled.

{¶11} Appeal dismissed.

DIANE V. GRENDALL, J.,

THOMAS R. WRIGHT, J.,

concur.