

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2005-T-0096
WILLIAM D. McCULLOUGH,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 01 CR 565.

Judgment: Appeal dismissed.

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

William D. McCullough, pro se, PID: 420-784, Hocking Correctional Facility, P.O. Box 59, Nelsonville, OH 45764-0059 (Defendant-Appellant).

DONALD R. FORD, P.J.,

{¶1} On September 23, 2005, appellant, William D. McCullough, filed a pro se motion for delayed appeal, pursuant to App.R. 5(A). Appellant appeals from his judgment of conviction and sentence issued by the trial court on November 2, 2001, in which appellant entered a plea of guilty to three counts of rape and one count of gross sexual imposition. The trial court sentenced him to serve a prison term of ten years on his rape conviction and five years on his conviction for gross sexual imposition. The sentences were to be served consecutively.

{¶2} Appellant's motion for delayed appeal was filed over three and one-half years after the judgment was entered by the trial court.

{¶3} App.R. 5(A) provides, in relevant part:

{¶4} “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 in criminal cases, an appeal may be taken only by leave of the court to which the appeal is taken. 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.”

{¶5} In his motion, appellant asserts, as his reasons for failing to perfect a timely appeal, that he had “life threatening” health issues at the time of his sentencing that prevented him from filing his appeal within thirty days; his trial counsel was ineffective; and he lacked the knowledge of his time limitations for filing an appeal.

{¶6} Given that over three and one-half years elapsed between the time of appellant’s conviction and sentence until the filing of his motion for delayed appeal, it is evident that appellant was not diligent in taking the proper steps to protect his own rights. Further, the reasons submitted by appellant as the cause for the delay do not adequately justify waiting that length of time to initiate a direct appeal. It is reasonable to conclude that a defendant who is incarcerated in the state correctional institution is aware that he cannot wait over three and one-half years to file an appeal.

{¶7} Accordingly, it is ordered that appellant’s motion for leave to file a delayed appeal is hereby overruled.

{¶8} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J., concurs,

WILLIAM M. O’NEILL, J., dissents.