

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2008-L-144
RAYMOND S. ANDERSON,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 04 CR 000420.

Judgment: Appeal dismissed.

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

Raymond S. Anderson, pro se, PID: 474-081, Belmont Correctional Institution, P.O. Box 540, St. Clairsville, OH 43950-0540 (Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} On September 22, 2008, appellant, Raymond S. Anderson, filed a pro se motion for leave a delayed appeal, pursuant to App.R. 5(A), and motion for leave to file a delayed appeal with an affidavit in support, along with his notice of appeal. Appellant is attempting to appeal his original judgment of conviction and sentence issued by the Lake County Court of Common Pleas on October 28, 2004. An appeal of that judgment was due by November 27, 2004, almost four years ago.

{¶2} Appellee, State of Ohio, filed its response opposing the motion for leave to file a delayed appeal on October 1, 2008. Appellant filed a reply to appellee's response on October 10, 2008.

{¶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, 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."

{¶9} In his motion, appellant asserts the following as his reasons for failing to perfect a timely appeal: 1) he has restrictive knowledge and comprehension of appellate matters; 2) he has a mental illness or disability; and 3) he relied on his trial counsel to file his appeal and was misled by him and the correctional institution.

{¶10} While appellant's reasons might explain a lapse of one year in initiating his direct appeal due to his "mental illness or disability" during that time, his reasons do not justify a delay of nearly four years between the time of appellant's conviction and

sentence until the filing of his motion for delayed appeal. We find that appellant was not diligent in taking the proper steps to protect his own rights.

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

{¶12} Appeal dismissed.

DIANE V. GRENDELL, P.J., concurs,

COLLEEN MARY O'TOOLE, J., dissents with Dissenting Opinion.

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I respectfully dissent from the majority.

Appellant has a constitutional right to appeal his conviction. *State v. Clark*, 11th Dist. No. 90-P-2211, 1991 Ohio App. LEXIS 2371, at 9-10. In cases wherein someone is found guilty and sentenced in a criminal matter and there is no prejudice to the state in the delay, the motion for delayed appeal should be granted. The state of Ohio and its taxpayers will be spending their hard earned tax dollars to feed, clothe, house, as well as provide medical care for appellant. I humbly suggest to the majority that we accept the delayed appeal, and review the record before this court to make sure the trial court did not err. There specifically is no time limit for appellant to assert his constitutional right to an appeal. In fact, the rule provides specifically for a delayed appeal if the thirty-day deadline to file its original appeal is missed and it specifically does not set a deadline for this delayed appeal to be filed.

This court has an affirmative constitutional and statutory duty to review the trial court for error. We are the constitutional quality control, and backstop for the citizens of the state of Ohio. By skirting this appeal, as well as others, I humbly submit we are not performing our duties to the best of our statutory and constitutional obligation. Thus, I dissent from the majority.