

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2008-T-0097
PHILLIP MIKE,	:	December 12, 2008
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 00 CR 108.

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).

Phillip Mike, pro se, PID: 408-591, Chillicothe Correctional Institution, P.O. Box 5500, Chillicothe, OH 45601 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.,

{¶1} On September 24, 2008, appellant, pro se, filed a 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 August 13, 2001.

{¶2} Appellant's notice of appeal and motion for delayed appeal were filed over seven years after the August 13, 2001 judgment was entered by the trial court.

{¶3} Appellee, State of Ohio, filed its response in opposition to the motion for delayed appeal on September 26, 2008, and appellant filed a reply to appellee's response on October 8, 2008.

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

{¶5} "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:

{¶6} "(a) Criminal proceedings;

{¶7} "(b) Delinquency proceedings; and

{¶8} "(c) Serious youthful offender proceedings.

{¶9} "(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."

{¶10} In his motion, appellant asserts the following as his reasons for failing to perfect a timely appeal: 1) trial counsel did not inform him of his right to appeal and that he was not longer representing him after his sentence was imposed; 2) trial counsel abandoned him after his sentencing leaving him without representation to appeal; 3) that he was prejudiced by such lack of assistance of counsel.

{¶11} Given that over seven 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 reason submitted by appellant as the cause for the delay does not adequately justify waiting that length of time to initiate a direct appeal. Therefore, appellant has not satisfied the requirements of App.R. 5(A).

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

{¶13} Appeal dismissed.

TIMOTHY P. CANNON, J., concurs,

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

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{¶14} I respectfully dissent from the majority.

{¶15} Appellant has a constitutional right to appeal his conviction. *State v. Clark*, (May 24, 1991), 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.

{¶16} 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.