

**6THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2009-T-0036
LAWRENCE K. McBRIDE,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2008 CR 163.

Judgment: Appeal dismissed.

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

Lawrence K. McBride, pro se, 480 Afton, Boardman, OH 44512 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} On April 22, 2009, appellant, pro se, filed a motion for leave to file a delayed appeal pursuant to App.R. 5(A). Appellant appeals from the judgment of his conviction and sentence issued by the trial court on October 30, 2008, in which appellant entered a plea of guilty to identity fraud. The trial court sentenced him to serve seven months in prison.

{¶2} Appellee filed its response in opposition to the motion on April 27, 2009.

{¶3} App.R. 5(A)(1) 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 ***[c]riminal proceedings[.]”

{¶5} App.R. 5(A)(2) states that “[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.”

{¶6} In his motion, as reasons for failing to perfect a timely appeal, he asserts:

{¶7} “1) Upon pleas of guilty and sentencing from which Defendant seeks leave to appeal, counsel ceased to represent Defendant;

{¶8} “2) Defendant was neither informed by this Court or counsel that his right to appeal must be pursued within thirty (30) days of conviction;

{¶9} “3) Defendant lacks knowledge of appellate procedure and law necessary to properly set forth a claim before this Court. ***”

{¶10} Contrary to the claims made in his motion, appellant’s “Finding on Guilty Plea to Bill of Information” of August 4, 2008, which is signed by appellant, states in relevant part:

{¶11} “My 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.”

{¶12} Thus, appellant was informed of his appellate rights and, nevertheless, failed to file his appeal in a timely manner. Therefore, 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, a pro se litigant, 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} In this case, appellant has filed a request for a delayed appeal but the majority does not feel inclined to accept it because he did not give a good reason for

missing the underlying deadline for filing his appeal. The majority, in emphasizing form over function, is placing an unnecessary barrier in front of appellant by its hyper technical reading of the rule. The denial of one's constitutional right to appeal is in itself sufficient to sustain the request in this instance.

{¶17} 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.

{¶18} Thus, I dissent from the majority.