

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2008-P-0105
DON C. BYRNE,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 95 CR 0010.

Judgment: Appeal dismissed.

Victor V. Viglucci, Portage County Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Don C. Byrne, pro se, PID: 312-698, Belmont Correctional Institution, P.O. Box 540, St. Clairsville, OH 43950 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} This matter is before this court on the pro se motion of appellant, Don C. Byrne, for leave to file a delayed appeal pursuant to App.R. 5(A). Along with his motion, appellant filed his notice of appeal on November 20, 2008. Appellant is appealing his conviction and sentence issued by the trial court on January 12, 2007. Thus, his appeal was filed approximately one year and nine months beyond the thirty-day requirement in App.R. 4(A).

{¶2} No brief or memorandum in opposition to the motion has been filed.

{¶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} As reasons for his delay in filing a timely appeal, appellant asserts that neither his trial counsel nor the trial court informed him of his right to appeal, and he was “without means” to hire an attorney to file an appeal on his behalf.

{¶10} Given the length of time of over one year and nine months that has passed from 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. Therefore, we find that appellant has not satisfied the requirements of App.R. 5(A).

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

{¶12} Appeal dismissed.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON., J.,

concur.