

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2010-L-045
ROBERT A. ZIMCOSKY,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 06 CR 000246.

Judgment: Appeal dismissed.

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

Robert A. Zimcosky, pro se, PID: 511-617, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030-8000 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} This matter is before this court on the pro se motion of appellant, Robert A. Zimcosky, to file a delayed appeal. Along with his motion, appellant filed his notice of appeal on May 4, 2010. In his notice, appellant indicates that he is appealing from the trial court's July 31, 2006 judgment entry of his conviction.

{¶2} No brief or memorandum in opposition to the motion for leave to file a delayed appeal 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} This court, and other Ohio courts, have held that an App.R. 5(A) delayed appeal cannot be utilized as a means of maintaining successive appeals from the same judgment. See *State v. Cioffi*, 11th Dist. Nos. 2009-T-0065 and 2009-T-0066, 2009-Ohio-4932 at ¶10; *State v. Perry*, 11th Dist. No. 2008-T-0127, 2009-Ohio-1320 at ¶5; *State v. Haynes* (1996), 111 Ohio App.3d 244, 245; *State v. Komora* (Oct. 9, 1998), 11th Dist. No. 98-G-2167.

{¶10} In the present case, appellant has previously appealed the trial court’s July 31, 2006 judgment entry of his conviction and sentence which resulted in a full opinion by this court on the merits. See *State v. Zimcosky*, 11th Dist. No. 2006-L-181, 2007-Ohio-6250. Therefore, pursuant to the foregoing cases, the procedure provided in App.R. 5(A) is not available to appellant in his present attempt to take a successive appeal from the same judgment entry which he has already appealed to this court.

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

{¶12} Appeal dismissed.

DIANE V. GRENDELL, J.,

TIMOTHY P. CANNON, J.,

concur.