

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2015-G-0023
DOUGLAS S. LEARN,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Geauga County Court of Common Pleas, Case No. 14 C 000068.

Judgment: Appeal dismissed.

James R. Flaiz, Geauga County Prosecutor, Courthouse Annex, 231 Main Street, Suite 3A, Chardon, OH 44024 (For Plaintiff-Appellee).

Douglas S. Learn, pro se, PID: A662-543, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Appellant, Douglas S. Learn, filed a pro se motion for leave to file a delayed appeal on June 10, 2015, from the trial court's January 14, 2015 judgment of conviction and sentence in the underlying criminal case. Appellee filed a response in opposition to appellant's motion on June 16, 2015.

{¶2} In the appealed judgment, the trial court noted that it had previously accepted appellant's guilty plea to aggravated vehicular homicide; aggravated vehicular

assault; vehicular assault; failure to stop after an accident; and operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them. The court sentenced appellant to serve 11 years and six months in prison and suspended his driver's license for life.

{¶3} Appellant's notice of appeal from the trial court's sentencing judgment was due no later than 30 days from January 14, 2015, or by February 13, 2015, which was not a weekend or a holiday. Appellant did not file his motion for delayed appeal until June 10, 2015, almost four months beyond the thirty-day deadline in App.R. 4.

{¶4} If a criminal defendant fails to institute a timely appeal from the trial court's sentencing judgment, he can only bring such an appeal at a later date if he is granted leave by the appellate court. App.R. 5(A)(1). As part of his motion for leave to pursue a delayed appeal, appellant must set forth reasons as to why he failed to comply with the thirty-day rule to file his appeal as of right. App.R. 5(A)(2).

{¶5} “In construing the foregoing requirement of the rule, this court has held that a proper motion for leave must address two specific issues. First, the defendant must give a legitimate explanation in regard to why he failed to file his notice of appeal in a timely manner under App.R. 4(A). Second, he must provide a legitimate explanation as to why he did not submit his motion for leave within a reasonable time after the end of the thirty-day period for bringing a timely appeal.” *State v. Floyd*, 11th Dist. Trumbull No. 2013-T-0097, 2014-Ohio-1676, ¶ 4, quoting *State v. Rini*, 11th Dist. Lake No. 2004-L-199, 2005-Ohio-936, ¶ 4.

{¶6} In regard to the reasonableness of the delay, this court has stated:

{¶7} “Even if a defendant is not informed of his right to appeal at the time of his

conviction, he still has an obligation to take steps to protect his rights within a reasonable time period. Stated differently, if a defendant believes, in the months following his conviction, that an error occurred in the trial proceedings, he has the burden to either research the matter himself or obtain a new attorney to represent him. In the instant case, [the defendant] has not alleged that he took any steps in the months following his conviction to discover whether he could contest his conviction, ***.” *Rini*, at ¶ 6, quoting *State v. Binion*, 11th Dist. Trumbull No. 2002-T-0093, ¶ 4 (Dec. 13, 2002).

{¶8} In the present motion, appellant asserts as his reason for not filing a timely appeal that the trial court failed to advise him of his right to appeal and for court-appointed counsel. Appellant further indicates that under Crim.R. 32(B) the trial court is required to notify a defendant of his appellate rights. R.C. 2953.08(D)(1).

{¶9} The state argues that Crim.R. 32(B)(1) or (2) does not apply since appellant pleaded guilty, and he did not have a right to appeal his sentence. In addition, the state asserts that both the prosecution and defense counsel recommended the 11 and one-half year prison sentence, which the trial court imposed; thus, the sentence was authorized by law so the trial court was not required to advise appellant of his appellate rights.

{¶10} A review of appellant’s written plea of guilty reflects that he was advised of his right to have appointed counsel and his right to appeal a maximum sentence. Further, he was advised that he had 30 days to file an appeal. As this court stated in *Rini, supra*, even if appellant was not advised of his appellate rights when he should have been, he was still obligated to take the proper steps to protect his rights within a

reasonable time.

{¶11} The present motion does not set forth a valid reason for appellant's failure to timely perfect his appeal. In the absence of a legitimate explanation for the four month delay, appellant has not met the requirements of App.R. 5(A).

{¶12} Therefore, appellant's motion for leave to file a delayed appeal is overruled. It is the order and judgment of this court that this appeal is hereby dismissed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.