

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2015-T-0079
LARRY SMITH,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2014 CR 00387.

Judgment: Appeal dismissed.

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

Larry Smith, pro se, PID: A671-308, Lorain Correctional Institution, 2075 South Avon Belden Road, Grafton, OH 44044 (Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} On July 17, 2015, appellant, Larry Smith, pro se, filed a motion for leave to file a delayed appeal, pursuant to App.R. 5(A), with this court. No notice of appeal was filed with the trial court. It appears that appellant is appealing from the trial court's May 19, 2015 entry convicting him of attempted felonious assault and sentencing him to serve thirty-six months in prison.

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

{¶3} App.R. 5(A) provides:

{¶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. The movant also shall furnish an additional copy of the notice of appeal and a copy of the motion for leave to appeal to the clerk of the court of appeals who shall serve the notice of appeal and the motions upon the prosecuting attorney.*” (Emphasis added.)

{¶9} In the present case, appellant has not complied with App.R. 5(A) because he failed to file a notice of appeal in the trial court concurrently with the filing of his motion for leave to appeal. See *State v. Fisher*, 46 Ohio App.2d 279 (1975); *State v. Pavisich*, 11th Dist. Portage No. 2014-P-0028, 2014-Ohio-5313. Therefore, appellant’s present motion is procedurally defective, and he has failed to invoke this court’s jurisdiction.

{¶10} We note that appellant is not barred from filing a new motion for leave to appeal along with a notice of appeal in accordance with the rules of court.

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

{¶12} Appeal dismissed.

TIMOTHY P. CANNON, P.J., concurs,

DIANE V. GRENDALL, J., concurs in judgment only.