

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2015-P-0037
JAMES PAVISICH,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2011 CR 0349.

Judgment: Appeal dismissed.

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

James Pavisich, pro se, PID: A604-607, Hocking Unit, P.O. Box 59, 16759 Snake Hollow Road, Nelsonville, OH 45764 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} This matter is before this court on the pro se motion for leave of appellant, James Pavisich, to file a delayed appeal, pursuant to App.R. 5(A). Along with his motion, appellant filed his notice of appeal on May 26, 2015. Appellant appeals from his conviction and sentence of September 2, 2011.

{¶2} A timely notice of appeal from the September 2, 2011 sentencing entry was due no later than October 3, 2011, which was not a weekend or a holiday.

Appellant's notice of appeal and motion for leave to appeal were not filed until May 26, 2015, over three and one-half years beyond the due date.

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

{¶4} We would first note that this is appellant's second attempt at filing a motion for leave to file a delayed appeal. In his first attempt, in *State v. Pavisich*, 11th Dist. Portage No. 2014-P-0028, 2014-Ohio-5313, the motion for leave was filed over two and one-half years after appellant's conviction and sentence. The motion was overruled by this court on December 1, 2014, for appellant's failure to comply with App.R. 5(A) by filing a notice of appeal concurrently with the filing of a motion for leave to appeal.

{¶5} App.R. 4(A)(1) states in relevant part:

{¶6} “* * * [A] party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within 30 days of that entry.”

{¶7} App.R. 5(A) provides:

{¶8} “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:

{¶9} “(a) Criminal proceedings;

{¶10} “(b) Delinquency proceedings; and

{¶11} “(c) Serious youthful offender proceedings.

{¶12} “(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.”

{¶13} As reasons for his failure to timely perfect his appeal as of right, appellant generally asserts that he is “cognitively impaired—unable to ratiocinate in realtime (sic).” He further indicates that he “only recently was able to enlist the assistance of certain individuals willing to assist [him], who are empathetic and trained in aspects of law.”

{¶14} Upon consideration, we find that appellant’s reasons fail to justify both his first delay of over two and one-half years to initiate a delayed appeal and now his second, present attempt in filing his notice of appeal over three and one-half years after his conviction and sentence.

{¶15} For the foregoing reasons, appellant’s pro se motion for leave to file a delayed appeal is hereby overruled.

{¶16} Appeal dismissed.

THOMAS R. WRIGHT, J., concurs,

COLLEEN MARY O’TOOLE, J., dissents with a Dissenting Opinion.

COLLEEN MARY O’TOOLE, J., dissents with a Dissenting Opinion.

{¶17} I respectfully dissent with the majority’s position denying appellant’s motion for a delayed appeal based on my dissenting opinions in similar matters involving App.R. 5(A). *State v. Christopher*, 11th Dist. Portage Nos. 2013-P-0003,

2013-P-0004, 2013-P-0005, 2013-Ohio-1946, ¶14-22; *State v. Grant*, 11th Dist. Lake No. 2013-L-101, 2014-Ohio-5378, ¶16-25; *State v. Gibbs*, 11th Dist. Geauga No. 2014-G-3201, 2014-Ohio-5772, ¶16-25; *State v. Funk*, 11th Dist. Lake No. 2014-L-094, 2015-Ohio-813, ¶16-24.