

[Cite as *State v. Watson*, 2001-Ohio-3335.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,)	
PLAINTIFF-APPELLEE,)	CASE NO. 01 C.A. 112
- VS -)	OPINION
DWAYNE A. WATSON,)	AND
DEFENDANT-APPELLANT.)	JOURNAL ENTRY

CHARACTER OF PROCEEDINGS: Application for Delayed Appeal

JUDGMENT: Application Denied
Appeal Dismissed

APPEARANCES:

For Plaintiff-Appellee: Attorney Paul J. Gains
Mahoning County Prosecutor
Mahoning County Courthouse
120 Market Street
Youngstown, Ohio 44503

For Defendant-Appellant: Dwayne A. Watson, Pro Se
#234-265
Grafton Correctional Inst.
2500 S. Avon-Belden Rd.
Grafton, Ohio 44044

JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Mary DeGenaro

Dated: June 28, 2001

PER CURIAM.

{¶1} This matter arises from defendant-appellant, Dwayne A. Watson's for Leave to File a Delayed Appeal pursuant to App.R. 5(A). On June 4, appellant pled guilty to Felonious Assault, Aggravated Robbery and Kidnapping was sentenced to concurrent terms of not less than 11 nor more than 25 years actual incarceration. No timely appeal as of right was taken in this case.

{¶2} Whether to grant or refuse leave to file a delayed appeal is within the sound discretion of the appeals court. See *State v. McGahan* (1949), 86 Ohio App. 283. A delayed appeal should be granted where it appears on the face of the record the overruling of such motion would result in a miscarriage of justice. See *State v. Bednarik* (1954), 101 Ohio App. 339. In this case the denial of appellant's motion for leave to file a delayed appeal does not result in a miscarriage of justice.

{¶3} Appellant was sentenced almost ten years ago. No direct appeal was attempted in this case. Even a *pro se* appellant must take some affirmative steps to protect his rights in these matters. In the case of *State v. Riddick* (1972 Ohio St.3d 88, the Ohio Supreme Court, in dealing with an application to reopen an appeal, stated:

{¶4} "Lack of effort or imagination, and ignorance of the law, are no circumstances and do not automatically establish good cause for failure to obtain timely relief."

{¶5} App.R. 5 governs the procedure for granting a motion for delayed appeal in criminal cases. That rule states, in relevant part:

{¶6} "(A) Motion by defendant for delayed appeal. 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 in criminal cases, an appeal may be taken only by leave of the court to which the appeal is taken. 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 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 motion on the prosecuting attorney.

{¶7} "* * *

{¶8} "(D) Determination of the motion. Except when required by the court, motions shall be determined by the court of appeals on the documents filed without a formal hearing or oral argument."

{¶9} In this case appellant has not set forth any reason for having failed to perfect a timely appeal, nor has he submitted any document or evidence from which his failure to timely file his appeal of right could be deduced.

{¶10} For the reasons stated above, appellant has not established good cause for his delayed appeal and said application is denied. Appeal dismissed.

{¶11} Costs taxed against appellant.

Monofrio, J., concurs.

Markovich, J., concurs.

Genaro, J., concurs.