

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

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|----------------------|---|-----------------------------|
| STATE OF OHIO, | : | MEMORANDUM OPINION |
| Plaintiff-Appellee, | : | |
| - vs - | : | CASE NO. 2005-T-0068 |
| VARIAN C. CALLAHAN, | : | |
| Defendant-Appellant. | : | |

Criminal Appeal from the Court of Common Pleas, Case No. 98 CR 143.

Judgment: Appeal dismissed.

Dennis Watkins, Trumbull County Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Varian C. Callahan, pro se, PID #357-362 Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030-8000 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} On June 7, 2005, appellant, Varian C. Callahan, filed a pro se motion for leave to file a delayed appeal pursuant to App.R. 5(A). He is attempting to appeal his conviction and sentence entered on May 1, 1998. Thus, appellant waited over seven years to appeal. The state of Ohio has filed a response to appellant's motion, and appellant has filed a reply to that response.

{¶2} App.R. 5(A) provides that after the expiration of the thirty day time period for filing a timely notice of appeal, an appeal can only be taken with leave of the appellate court. Additionally, when filing a motion for leave, the appellant must set forth the reasons for his or her failure to perfect an appeal as of right. App.R. 5(A)(2).

{¶3} In his motion, appellant claims that the reason for failing to perfect a timely appeal is that he only recently learned that the trial court's imposed sentence was contrary to the law as set forth in R.C. 2929.11 and *State v. Edmonson* (1999), 86 Ohio St.3d 324.

{¶4} Given that over seven years have elapsed between the time of appellant's conviction and sentence and the filing of his motion for leave to appeal – and six years have passed since *Edmonson* was released – it is evident that appellant was not diligent in taking the proper steps to protect his own rights. Further, the reason submitted by appellant as the cause for failing to perfect a timely appeal does not adequately justify a delay of over seven years in appellant's attempt to initiate a direct appeal.

{¶5} Accordingly, upon consideration of appellant's motion, appellee's response, and appellant's reply, it is ordered that the motion for leave to file a delayed appeal is hereby overruled.

{¶6} Appeal dismissed.

WILLIAM M. O'NEILL, J.,

DIANE V. GRENDALL, J.,

concur.