

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

STATE OF OHIO,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2009-P-0018</b>
MELISSA L. BURRELL,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2008 CR 0125

Judgment: Appeal dismissed.

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

*Holly L. Bednarski, Bednarski & Reece, L.P.A.*, 159 South Main Street, #300, Akron, OH 44308 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.,

{¶1} On March 25, 2009, appellant, Melissa L. Burrell, by and through counsel, filed a “Motion for Leave to File Notice of Appeal,” construed by this court as a motion for leave to file a delayed appeal, pursuant to App.R. 5(A). In the motion, appellant sets forth reasons for the delay in appealing the judgment of conviction of sentence issued by the trial court on June 16, 2008.

{¶2} App.R. 5(A) provides:

{¶3} “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:

{¶4} “(a) Criminal proceedings;

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

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

{¶7} “(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.)

{¶8} In the present case, appellant has not complied with App.R. 5(A) because she failed to file a notice of appeal in the trial court concurrently with the filing of her motion for leave to appeal. See *State v. Fisher* (1975), 46 Ohio App.2d 279. In addition, appellant has not complied with Loc.R. 3(D)(3) of this court by attaching to such notice of appeal a copy of the judgment being appealed.

{¶9} In light of the foregoing, appellant’s present motion is procedurally defective and she has failed to invoke this court’s jurisdiction.

{¶10} However, appellant is not barred from filing a new motion for leave to appeal that complies with the Ohio Rules of Appellate Procedure and the local rules of this court.

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

{¶12} Appeal dismissed.

MARY JANE TRAPP, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.