

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NOS. 2009-T-0065 and 2009-T-0066
ANTHONY CIOFFI, JR.,	:	
Defendant-Appellant.	:	

Criminal Appeals from the Court of Common Pleas, Case Nos. 95 CR 696 and 96 CR 599.

Judgment: Appeals dismissed.

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

Anthony Cioffi, Jr., pro se, PID: 332-078, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030-8000 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} This matter is before this court on the pro se motion of appellant, Anthony Ciolffi, Jr., to file a delayed appeal. Along with his motion, appellant filed his notice of appeal on June 23, 2009. Appellant is appealing from the trial court’s March 11, 2002 judgment denying his “Motion to Set Aside Judgment of Conviction and to Withdraw Pleas of Guilty.”

{¶2} Appellee, the state of Ohio, filed a response in opposition to appellant's motion on June 25, 2009. Appellant filed a pro se reply to the response on July 24, 2009.

{¶3} App.R. 5(A) provides, in relevant part:

{¶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."

{¶9} As appellee correctly asserts in its opposition to appellant's pro se motion, appellant has previously appealed the March 11, 2002 judgment with this court in *State v. Cioffi*, 11th Dist. Nos. 2002-T-0037 and 2002-T-0039, 2003-Ohio-2374, approximately seven years ago. The trial court judgments were affirmed.

{¶10} Ohio courts have held that an App.R. 5(A) delayed appeal cannot be utilized as a means of maintaining successive appeals from the same judgment. See *State v. Perry*, 11th Dist. No. 2008-T-0127, 2009-Ohio-1320 at ¶5; see, also, *State v. Haynes* (1996), 111 Ohio App.3d 244, 245.

{¶11} On this basis alone, the appeals are subject to dismissal since appellant is attempting to appeal from a judgment that has already been appealed and decided on the merits by this court.

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

{¶13} Appeals dismissed.

MARY JANE TRAPP, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.