

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2014-P-0044
DUSTIN T. HAYES,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2013 CR 00019.

Judgment: Appeal dismissed.

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

Dustin T. Hayes, pro se, PID: A644-386, Belmont Correctional Institution, P.O. Box 540, 68518 Bannock Road, St. Clairsville, OH 43950 (Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} On July 21, 2014, appellant, Dustin T. Hayes, pro se, filed a Motion for Leave to File a Delayed Appeal pursuant to App.R. 5(A). No notice of appeal was filed with the trial court. It appears from the trial court docket that appellant was convicted and sentenced on September 13, 2013.

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

{¶9} As there is no appeal to proceed upon, the motion for leave to file a delayed appeal is overruled.

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

{¶11} Appeal dismissed.

TIMOTHY P. CANNON, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.