

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

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| STATE OF OHIO, | : | MEMORANDUM OPINION |
| Plaintiff-Appellee, | : | |
| - vs - | : | CASE NO. 2003-A-0098 |
| JAMES E. RIVERS, | : | |
| Defendant-Appellant. | : | |

Criminal appeal from the Common Pleas Court, Case No. 98 CR 284.

Judgment: Appeal dismissed.

Thomas L. Sartini, Ashtabula County Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellee).

James E. Rivers, pro se, PID: 378-437, Grafton Correctional Institution, 2500 South Avon-Belden Road, Grafton, OH 44044 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} On August 22, 2003, appellant, James E. Rivers, filed a motion for leave to file a delayed appeal, pursuant to App.R. 5(A), of an October 14, 1999 judgment from the Ashtabula County Court of Common Pleas. Appellee, State of Ohio, filed a response in opposition to the motion on August 27, 2003. Appellant filed a reply to appellee's response on September 8, 2003.

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

{¶3} “(1) 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.”

{¶8} In his motion, appellant claims that the reason for failing to perfect a timely appeal is that he “only recently ascertained” that he could file a motion for a delayed appeal.

{¶9} Given that almost four years have elapsed between the time of appellant’s conviction and sentence and the filing of his motion for leave to appeal, 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 almost four years in appellant’s attempt to initiate a direct appeal of his conviction and sentence.

{¶10} 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.

{¶11} The appeal is dismissed.

Appeal dismissed.

DONALD R. FORD, P.J., and DIANE V. GRENDALL, J., concur.