

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

|                      |   |                             |
|----------------------|---|-----------------------------|
| STATE OF OHIO,       | : | <b>MEMORANDUM OPINION</b>   |
| Plaintiff-Appellee,  | : |                             |
| - vs -               | : | <b>CASE NO. 2006-T-0102</b> |
| TIMOTHY GOSS,        | : |                             |
| Defendant-Appellant. | : |                             |

Criminal appeal from the Court of Common Pleas, Case No. 02 CR 486.

Judgment: Appeal dismissed.

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

*Timothy Goss*, pro se, PID: 452-873, Belmont Correctional Institution, P.O. Box 540, St. Clairsville, OH, 43950 (Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} On September 12, 2006, appellant, Timothy Goss, filed a motion for leave to file a delayed appeal pursuant to App.R. 5(A). The appealed judgment is a July 21, 2006 decision issued by the Trumbull County Court of Common Pleas which denied appellant's motion to modify his sentence.

{¶2} On September 20, 2006, appellee, State of Ohio, filed a response in opposition to the motion indicating that the delayed appeal should be denied because the

appealed order is not a final appealable order. Specifically, appellee indicates that appellant's motion to modify sentence in the trial court was actually a motion for judicial release, and the denial of such a motion does not affect a substantial right and constitute a final appealable order. In support of its argument, appellee cites *State v. Brown*, 11th Dist. No. 2004-T-0001, 2004-Ohio-1433.

{¶3} For the following reasons, we agree with appellee. In *State v. Coffman*, 91 Ohio St.3d 125, 2001-Ohio-296, the Supreme Court of Ohio expressly held that "a trial court's denial of shock probation is never a final appealable order." *Id.* at 126. Every appellate court in Ohio that has addressed this issue after *Coffman* has held that that the same logic is applicable to a denial of a motion for judicial release since it mirrors shock probation. *State v. Ingram*, 10th Dist. No. 03AP-149, 2003-Ohio-5380; *State v. Greene*, 2d Dist. No. 02-CA-17, 2002-Ohio-2595; *State v. Galbreath* (June 11, 2001), 12th Dist. No. CA2000-10-078, 2001 Ohio App. LEXIS 2607. Since there is no right to judicial release, the denial of a motion for judicial release cannot affect a "substantial right" as that term is defined in R.C. 2505.02 (A)(1).

{¶4} Based upon the foregoing analysis, appellant's motion for leave to file a delayed appeal is hereby overruled.

{¶5} Appeal dismissed.

DONALD R. FORD, P.J.,

DIANE V. GRENDELL, J.,

concur.