

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

STATE OF OHIO,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2007-L-124</b>
RUSSELL E. APPENZELLER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 06 CR 000108.

Judgment: Appeal dismissed.

*Charles E. Coulson*, Lake County Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

*Russell E. Appenzeller*, pro se, PID: 514-991, Belmont Correctional Institution, P.O. Box 540, St. Clairsville, OH 43950 (Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} On August 13, 2007, appellant, Russell E. Appenzeller, pro se, filed a motion for leave to file a delayed appeal pursuant to App.R. 5(A). The appealed judgment issued by the Lake County Court of Common Pleas on October 25, 2006, denied appellant's motion for new trial.

{¶2} No response to the motion for delayed appeal has been filed.

{¶3} A brief history of this matter is as follows. On October 11, 2006, prior to sentencing, appellant filed a motion for new trial in the trial court. The motion was

denied on October 25, 2006, which was also prior to his sentencing. On November 9, 2006, appellant was sentenced to an aggregate prison term of twenty eight years. Appellant perfected a timely appeal from his conviction and sentence on December 11, 2006, under 11th Dist. No. 2006-L-258. Counsel was appointed to represent appellant for purposes of appeal on September 6, 2007, and that appeal is currently pending with this court.

{¶4} In light of this, clearly the trial court's denial of appellant's motion for new trial can be appealed as part of his appeal in 11th Dist. No. 2006-L-258. In fact, in that appeal, through his appointed counsel, appellant is free to assert any assignments of error that he perceives occurred from any of trial court rulings that were issued prior to the final order of his conviction and sentence, including the October 25, 2006 judgment. Thus, there is no need to file a separate, delayed appeal of the October 25, 2006 judgment.

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

{¶6} Appeal dismissed.

DIANE V. GRENDALL, J.,

CYNTHIA WESTCOTT RICE, P.J.,

concur.