

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2009-L-043
TYRONE A. BRISSETT,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 08 CR 000315.

Judgment: Appeal dismissed.

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

Tyrone A. Brissett, pro se, PID: A553-488, 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, Tyrone A. Brissett, to file a delayed appeal pursuant to App.R. 5(A). Along with his motion, appellant filed his notice of appeal on March 24, 2009. Appellant is appealing the trial court's August 27, 2008 judgment convicting him of the offense of trafficking in marijuana and sentencing him to serve seventeen months in prison. Also, appellant's driver's license was suspended for one year.

{¶2} Appellant's notice of appeal was due on before September 26, 2008. Thus, his appeal is untimely by almost six months.

{¶3} No brief or memorandum in opposition to appellant's motion has been filed.

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

{¶5} "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:

{¶6} "(a) Criminal proceedings;

{¶7} "(b) Delinquency proceedings; and

{¶8} "(c) Serious youthful offender proceedings.

{¶9} "(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. ***."

{¶10} In his motion, appellant offers the following justification for failing to file a timely appeal:

{¶11} "[T]he trial court failed to inform Defendant-Appellant of his right to appeal. Defense counsel only exasperated or compounded the problem by failing to bring it to the attention of the trial court, failing to object to the trial court's failure to so inform [him], and by failing to inform Defendant-Appellant himself."

{¶12} Contrary to the claim made in his motion, the third paragraph on the second page of appellant's "Written Plea of Guilty and Judgment Entry" of August 25, 2008, states:

{¶13} “My attorney has explained my right to appeal a maximum sentence. I know the Judge may either sentence me today or refer my case for a presentence report.”

{¶14} Based on the record before us, appellant was informed of his appellate rights and, nevertheless, failed to file his appeal in a timely manner. Therefore, it is ordered that appellant’s motion for leave to file a delayed appeal is hereby overruled.

{¶15} Appeal dismissed.

MARY JANE TRAPP, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.