

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

STATE OF OHIO,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2011-P-0093</b>
JOSE F. LINO,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2009 CR 0717.

Judgment: Appeal dismissed.

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

*Jose F. Lino*, pro se, PID: A582795, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030 (Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} This matter is before this court on the pro se motion of appellant, Jose F. Lino, to file a delayed appeal. In addition to filing his motion for leave with this court, appellant filed his Notice of Appeal on November 21, 2011. Appellant seeks to appeal the trial court's March 17, 2010 judgment convicting him of robbery and sentencing him to serve five years in prison. Thus, appellant's Notice of Appeal was filed approximately 20 months after his March 17, 2010 conviction and sentence.

{¶2} No brief or memorandum in opposition to the motion has been filed.

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

{¶4} “(1)(a) 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 \* \* \* [c]riminal proceedings \* \* \*.

{¶5} “(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. \* \* \*”

{¶6} In his motion, appellant asserts the following as his reasons for failing to perfect a timely appeal: (1) he was under the misguided advice of his trial counsel that his guilty plea waived all rights to an appeal; and (2) he was unaware of his limited right to appeal as the trial court did not inform him of such at the time of sentencing.

{¶7} Given the length of time of 20 months that has passed from the time of appellant’s conviction and sentence until the filing of his motion for delayed appeal, it is evident that appellant was not diligent in taking the proper steps to protect his rights. Further, the reasons submitted by appellant as the cause for the delay do not adequately justify waiting that length of time to initiate a direct appeal. As such, we find that appellant has not satisfied the requirements of App.R. 5(A).

{¶8} Appellant’s motion for leave to file a delayed appeal is hereby overruled.  
Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,  
MARY JANE TRAPP, J.,  
concur.