

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

|                      |   |                             |
|----------------------|---|-----------------------------|
| STATE OF OHIO,       | : | <b>MEMORANDUM OPINION</b>   |
| Plaintiff-Appellee,  | : |                             |
| - VS -               | : | <b>CASE NO. 2015-A-0066</b> |
| CHARLES T. GREEN,    | : |                             |
| Defendant-Appellant. | : |                             |

Criminal Appeal from the Court of Common Pleas, Case No. 2011 CR 00371.

Judgment: Appeal dismissed.

*Nicholas A. Iarocci*, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

*Charles T. Green*, pro se, PID: A633-471, Belmont Correctional Institution, P.O. Box 540, 68518 Bannock Road, St. Clairsville, OH 43950 (Defendant-Appellant).

THOMAS R. WRIGHT, J.,

{¶1} Before this court is appellant, Charles T. Green's, delayed appeal and motion for delayed appeal. Appellant appeals the November 29, 2012 entry sentencing him to a four-year prison term and finding him to be a Tier II Sex Offender.

{¶2} A timely notice of appeal was due no later than December 31, 2012, which is not a weekend or a holiday. App.R.4(A). Appellant's notice of appeal was not filed until November 23, 2015, almost three years beyond the due date.

{¶3} Appellee, the state of Ohio, filed a response.

{¶4} App.R. 4(A)(1) states, in part:

{¶5} “\* \* \* [A] party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within 30 days of that entry.”

{¶6} App.R. 5(A) provides:

{¶7} “(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:

{¶8} “(a) Criminal proceedings;

{¶9} “(b) Delinquency proceedings; and

{¶10} “(c) Serious youthful offender proceedings.

{¶11} “(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.”

{¶12} In his motion, appellant asserts the following as his reasons for failing to perfect a timely appeal: 1) that he is indigent; 2) his trial counsel told him that he was going to file an appeal for him; 3) he was unaware that the trial court failed to make the necessary findings to impose consecutive sentences; 4) if not for the trial court’s negligence, he would have timely appealed his case.

{¶13} Given the length of time of almost three years that have passed since appellant’s conviction and sentence and the filing of his notice of appeal and motion for

delayed appeal, it is evident that appellant was not diligent in taking the proper steps to protect his own rights.

{¶14} Accordingly, it is ordered that appellant's pro se motion for leave to file a delayed appeal is hereby overruled and the appeal is dismissed.

TIMOTHY P. CANNON, J., concurs,

COLLEEN MARY O'TOOLE, J., dissents with a Dissenting Opinion.

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COLLEEN MARY O'TOOLE, J., dissents with a Dissenting Opinion.

I respectfully dissent with the majority's position denying appellant's motion for a delayed appeal based on my dissenting opinions in similar matters involving App.R. 5(A). *State v. Christopher*, 11th Dist. Portage Nos. 2013-P-0003, 2013-P-0004, and 2013-P-0005, 2013-Ohio-1946, ¶14-22; *State v. Grant*, 11th Dist. Lake No. 2013-L-101, 2014-Ohio-5378, ¶16-25; *State v. Gibbs*, 11th Dist. Geauga No. 2014-G-3201, 2014-Ohio-5772, ¶16-25; *State v. Funk*, 11th Dist. Lake No. 2014-L-094, 2015-Ohio-813, ¶16-24.