

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2015-A-0073
CHARLES T. GREEN,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2011 CR 00436.

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 February 21, 2013 entry sentencing him to serve six years in prison, concurrently with Ashtabula C.P. No. 2011 CR 00371.

{¶2} A timely notice of appeal from the February 21, 2013 judgment entry was due no later than March 24, 2013, which is not a weekend or a holiday. App.R.4(A).

Appellant's notice of appeal was not filed until November 23, 2015, over two and one-half years beyond the due date.

{¶3} Appellee, the state of Ohio, filed a response in opposition to appellant's motion on November 30, 2015.

{¶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 over two and one-half 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 this appeal is dismissed.

TIMOTHY P. CANNON, J., concurs,

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

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.