

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2016-A-0040
BRYAN M. ERICH,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Ashtabula County Court of Common Pleas, Case No. 2015 CR 000734.

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 (For Plaintiff-Appellee).

Bryan M. Erich, *pro se*, PID: A682-216, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} This matter is before this court on the *pro se* motion for leave to file a delayed appeal, pursuant to App.R. 5(A), filed by appellant, Bryan M. Erich. Along with the motion, appellant filed his notice of appeal in the trial court on August 4, 2016.

{¶2} Appellant appeals the trial court's entry of March 29, 2016, which sentences him to serve a prison term of five years, concurrently with Ashtabula CP Case Nos. 2015 CR 00664 and 2015 CR 00419 after he entered a plea of guilty to

illegal assembly or possession of chemicals for the manufacture of drugs and possession of heroin.

{¶3} A timely notice of appeal from the entry was due no later than April 28, 2016, which was not a weekend or a holiday. Therefore, appellant's appeal is untimely by more than three months.

{¶4} Appellee filed a response in opposition to the motion for delayed appeal on August 9, 2016.

{¶5} App.R. 4(A)(1) states in relevant part:

{¶6} “* * * [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.”

{¶7} App.R. 5(A) provides:

{¶8} “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:

{¶9} “(a) Criminal proceedings;

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

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

{¶12} “(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.”

{¶13} As reasons for failing to file a timely appeal, appellant asserts in his motion that both the trial court and his trial counsel failed to advise him of his appellate rights under Crim.R. 32.

{¶14} However, as correctly noted in appellee's response to the motion, the first page, last paragraph, of appellant's signed March 29, 2016 "Written Plea of Guilty and Plea Agreement" indicates that: "[m]y attorney has explained my right to appeal a maximum sentence, my other limited appellate rights, and that any appeal must be filed within 30 days of the Court's entry of the judgment of my sentence." Appellee also argues that appellant has a long history in the criminal justice system dating back to his first drug conviction in 2005. Thus, it is very unlikely that appellant was not aware of his appellate rights.

{¶15} Because the signed, written plea of guilty reflects that appellant was clearly advised of his appellate rights, we find that appellant has failed to state a valid reason for filing his appeal beyond the 30-day requirement in App.R. 4(A).

{¶16} Therefore, it is ordered that appellant's motion for leave to file a delayed appeal is hereby overruled.

{¶17} Appeal dismissed.

DIANE V. GRENDALL, J., concurs,

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

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

{¶18} 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.