

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2016-A-0064
DOUGLAS M. MAYLE,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2014 CR 00298.

Judgment: Appeal dismissed.

Nicholas A. Iarocci, Ashtabula County Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Douglas M. Mayle, Jr., pro se, PID: A690-320, Lorain Correctional Institution, 2075 South Avon-Belden Road, Grafton, OH 44044 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} On October 24, 2016, appellant filed a motion for leave to file a delayed appeal, pursuant to App.R. 5(A), with this court. On the same date, he filed a notice of appeal with the trial court, which indicates that he is appealing from a September 6, 2016 judgment entry of the trial court. Thus, his appeal is untimely by 18 days.

{¶2} Appellee, the state of Ohio, filed a response in opposition to appellant's motion on October 31, 2016.

{¶3} In the appealed judgment, the trial court found that appellant had violated the conditions of his probation. The court granted appellee's motion to revoke his Community Control and ordered that appellant serve 30 months in prison for his conviction of attempted felonious assault.

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

{¶5} “(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:

{¶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} Appellant asserts as his reason for failing to file a timely appeal that the trial court and his trial counsel failed to advise him that he had a right to appeal and a right to appointment of appellate counsel. He indicates that he just learned of these rights recently by a fellow inmate.

{¶11} However, appellant's signed guilty plea of December 11, 2014, shows that the trial court advised of him of his limited appellate rights. Therefore, appellant has not asserted a valid reason for the delay in perfecting his appeal as of right, and therefore he has not satisfied the threshold in App.R. 5(A).

{¶12} For the foregoing reasons, appellant’s motion for leave to file a delayed appeal is hereby overruled.

{¶13} Appeal dismissed.

CYNTHIA WESTCOTT RICE, P.J., concurs,

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

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

{¶14} 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.