

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2016-L-073
GREGORY D. MELTON, JR.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 08 CR 000499.

Judgment: Appeal dismissed.

Charles E. Coulson, Lake County Prosecutor, and *Karen A. Sheppert*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Gregory D. Melton, Jr., pro se, PID: A570-333, Ross Correctional Institution, P.O. Box 7010, 16149 State Route 104, Chillicothe, OH 45601 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} This matter is before this court on the pro se motion of appellant, Gregory D. Melton, Jr., to file a delayed appeal. Along with his motion, appellant filed his notice of appeal on July 20, 2016. There was no entry attached to appellant’s notice; however, he indicates in the motion for delayed appeal that he is appealing “his ‘sentence’ issued in the Common Pleas case’s (sic) listed in the caption, Lake County, Ohio, Case No.’s

(sic) 08CR000499 * * *.”¹ He further indicates in the motion that he previously appealed his conviction and sentence in *State v. Melton*, 11th Dist. Lake No. 2009-L-078, 2010-Ohio-1278.

{¶2} Appellee, the state of Ohio, filed a response in opposition to the motion on August 1, 2016, also indicating that appellant already appealed the court’s sentencing entry in *Melton, supra*.

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

{¶4} “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:

{¶5} “(a) Criminal proceedings;

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

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

{¶8} “(2) A motion for leave to appeal shall be filed with the court of appeals * *

*.”

{¶9} This court, and other Ohio courts, have held that an App.R. 5(A) delayed appeal cannot be utilized as a means of maintaining successive appeals from the same judgment. See *State v. Haynes*, 111 Ohio App.3d 244, 245 (1996); *State v. Cioffi*, 11th Dist. Trumbull Nos. 2009-T-0065 and 2009-T-0066, 2009-Ohio-4932 at ¶10; *State v. Perry*, 11th Dist. Trumbull No. 2008-T-0127, 2009-Ohio-1320 at ¶5.

{¶10} In the present case, appellant has previously appealed the trial court’s May 28, 2009 judgment entry of his conviction and sentence which resulted in a full

1. Concomitantly with the filing of this motion, appellant filed motions for delayed appeal from Lake C.P. Case Nos. 08 CR 000376, 08 CR 000337, and 09 CR 000147. See *State v. Melton*, 11th Dist. Nos. 2016-L-074, 2016-L-075, and 2016-L-076.

opinion by this court in which we affirmed. *See Melton, supra*. The procedure in App.R. 5(A) is not available for appellant since he previously perfected an appeal as of right. *See Haynes, supra*.

{¶11} Therefore, appellant's pro se motion for leave to file a delayed appeal is hereby overruled, and the appeal is dismissed.

CYNTHIA WESTCOTT RICE, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.