

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2016-P-0013
ADAM MATTICE,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2012 CR 0135.

Judgment: Appeal dismissed.

Victor V. Viglucci, Portage County Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Kimberly Anne Valenti, P.O. Box 1149, Hudson, OH 44236 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Before this court is the pro se motion for leave to file a delayed appeal, pursuant to App.R. 5(A), filed by appellant Adam Mattice. Along with his motion, appellant filed his notice of appeal in the trial court on February 22, 2016. The trial court appointed counsel for appellant on March 1, 2016, after the appeal and motion were filed.

{¶2} Appellant appeals from his conviction and sentence of July 3, 2012. That entry reflects that appellant pleaded guilty to the offense of gross sexual imposition and

was found to be a Tier II Sex Offender. The court sentenced him to serve five years in prison.

{¶3} A timely notice of appeal from the July 3, 2012 judgment entry was due no later than August 2, 2012, which is not a weekend or a holiday. Thus, appellant's appeal is untimely by approximately three and one-half years.

{¶4} No brief or memorandum in opposition to appellant's motion has been filed.

{¶5} App.R. 4(A)(1) states, in 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 thirty days of that entry.”

{¶7} App.R. 5(A) provides:

{¶8} “(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:

{¶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} In his motion, appellant asserts that he was not informed by the trial court or his trial counsel “what an appeal was” as his reason for failing to file a timely appeal. That reason might justify a reasonable delay of time in filing his appeal. However, given the length of time of almost three and one-half years before initiating an 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 motion for leave to file a delayed appeal is hereby overruled.

{¶15} Appeal 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.

{¶16} 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.