

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2016-T-0093
JOHN WILLIAM KUCEK,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2015 CR 00565.

Judgment: Appeal dismissed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

John William Kucek, pro se, PID: A684-373, Belmont Correctional Institution, 68518 Bannock Road, St. Clairsville, OH 43950 (Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, John William Kucek, filed a motion for leave to file a delayed appeal, pursuant to App.R. 5(A), with this court, along with a notice of appeal in the trial court, on October 11, 2016. The notice of appeal indicates that appellant is appealing from the trial court’s June 27, 2016 sentencing entry. The entry indicates that appellant entered a plea of guilty to count 2, felonious assault, and the trial court ordered a jointly

recommended sentence of six years in prison. Appellant's appeal is untimely by approximately two months.

{¶2} Appellee, the state of Ohio, filed its response in opposition to the motion for delayed appeal on October 14, 2016.

{¶3} App.R. 5(A) provides:

{¶4} “(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:

{¶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 and shall set forth the reasons for the failure of the appellant to perfect an appeal as of right. * * *.”

{¶9} As reasons for failing to file a timely appeal, appellant asserts that he was never notified of his right to appeal and right to appointed counsel by the trial court or his trial counsel. He further indicates that he was just made aware of his appellate rights on October 6, 2016, by an inmate law clerk.

{¶10} In response, appellee asserts the opposite when appellant entered his guilty plea, he was fully aware that he had a limited right to appeal. In support, appellee cites the plea agreement appellant executed having two sections pertaining to the effect of the guilty plea on his right to appeal. The first section states:

{¶11} “The Court and my Attorney have advised me that by entering this Plea of Guilty I am waiving (giving up) the following Constitutional Rights: My right to a jury trial or trial to the Court; My right to confront and cross-examine the witnesses against me; My right to have compulsory process for obtaining witnesses in my favor; My right to require the State to prove my guilt beyond a reasonable doubt at a trial; My right not to be compelled to testify against myself; and *My right to appeal upon conviction after a trial.*” (Emphasis added.)

{¶12} The second relevant section provides: “My attorney has advised me that I may only be able to appeal the imposition of a maximum sentence or other procedural issues regarding this plea. I also understand my other limited appellate right that have been explained to me by the Court, and that I must file an appeal within thirty (30) days of my sentence.”

{¶13} Together, the two sections sufficiently inform appellant of his right to an appeal and time limit. Accordingly, appellant’s contention that he was not told of his right to appeal is false and, therefore, he has failed to state a valid reason for not filing a timely notice of appeal.

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

{¶15} Appeal dismissed.

DIANE V. GRENDALL, J.,

TIMOTHY P. CANNON, J.,

concur.