

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2016-T-0101
RICKY D. GREEN,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2016 CR 00038.

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).

Ricky D. Green, pro se, PID: A690-166, Lorain Correctional Institution, 2075 South Avon-Belden Road, Grafton, OH 44044 (Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Ricky D. Green, moves to file a delayed appeal. Appellant seeks to appeal the trial court’s August 18, 2016 sentencing entry committing appellant to 15 years to life in prison, plus three additional years for a firearm specification, after he entered a guilty plea to murder.

{¶2} Appellant’s notice of appeal was due no later than September 19, 2016, which was not a holiday or a weekend. Thus, it is untimely by approximately one and one-half months.

{¶3} Appellee, the state of Ohio, opposes.

{¶4} App.R. 5(A) provides:

{¶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} As reasons for failing to timely appeal, appellant states that he was not notified of his right to appeal and right to appointed counsel by the trial court or his trial counsel. He further states that he was first made aware of his appellate rights on October 17, 2016, by an inmate law clerk.

{¶11} In opposing, appellee argues that appellant’s August 2, 2016 signed plea agreement readily shows that appellant acknowledged that the trial court and his trial counsel notified him of limited appellate rights. Moreover, the “Finding on Guilty Plea to the Indictment,” states: “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 rights that have been explained to me by the Court, and that I must file an appeal within thirty (30) days of my sentence. I also understand that under certain circumstances, the State may appeal my sentence.”

{¶12} Since appellant’s reasons for filing an untimely appeal are refuted, he has not asserted a valid reason for failing to perfect a timely appeal.

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

{¶14} Appeal dismissed.

DIANE V. GRENDELL, J., concurs,

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

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

{¶15} 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.