

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2017-P-0038
CALEB D. WILLIAMS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2017 CR 00079 C.

Judgment: Appeal dismissed.

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

Caleb D. Williams, pro se, PID# A700-347, Lorain Correctional Institution, 2075 South Avon-Belden Road, Grafton, OH 44044 (Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} Appellant, Caleb D. Williams, pro se, filed a motion for leave to file a delayed appeal, pursuant to App.R. 5(A), with this court on July 18, 2017. Along with the motion, appellant filed his notice of appeal in the trial court on the same date.

{¶2} On the notice of appeal, appellant indicates that he is appealing from the trial court's March 31, 2017 entry of his "conviction." However, the trial court's conviction and sentencing entry was filed on June 8, 2017. The entry reflects that

appellant entered a written plea of guilty to counts one and two of the indictment, robbery, second degree felonies, and to counts three, four, and five, of assault, first degree misdemeanors. The court sentenced him to serve a total prison term of eight years.

{¶3} A timely notice of appeal from the June 8th entry was due no later than July 10, 2017. Thus, the appeal is untimely by eight days.

{¶4} No brief or response in opposition to the motion for delayed appeal has been filed.

{¶5} App.R. 4(A)(1) states in relevant 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 30 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} As reasons for failing to file a timely appeal, appellant asserts that the trial court and his trial counsel failed to advise him that he had a right to appeal or a right to appointment of appellate counsel. He contends that he was just made aware of those rights on July 5, 2017, by an inmate.

{¶14} However, a review of appellant's April 3, 2017 signed "Written Plea of Guilty" reflects that on pages three and four of the plea, the following was set forth regarding his appellate rights:

{¶15} "I understand that while I do not lose all of my rights to appeal if I plead guilty, that I will lose certain appellate rights by pleading guilty.

{¶16} "I understand that by pleading guilty I waive my right to appeal any issues that might have been raised had I gone to trial and been convicted.

{¶17} "I understand that any appeal in a criminal case must be filed within thirty (30) days after I am sentenced.

{¶18} "I understand that if I cannot afford an attorney or the costs of an appeal, the court can appoint an attorney to assist me and have the costs of my appeal paid for from public funds."

{¶19} Since it appears that appellant was advised of his limited appellate rights in entering his guilty plea, his reasons for filing an untimely appeal are not supportive. Therefore, appellant's motion for leave to file a delayed appeal is hereby overruled.

{¶20} 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.

{¶21} 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.