

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2017-P-0099
MATTHEW M. LUSANE,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Municipal Court, Kent Division, Case No. 2005 TRC 4525 K.

Judgment: Appeal dismissed.

Victor V. Vigluicci, Portage County Prosecutor, and *Pamela J. Holder*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Matthew M. Lusane, pro se, PID: A660-925, Trumbull Correctional Institution, P.O. Box 640, 5701 Burnett Road, Leavittsburg, OH 44430 (Defendant-Appellant).

THOMAS R. WRIGHT, P.J.

{¶1} On December 27, 2017, appellant, Matthew M. Lusane, filed a pro se motion for leave to file a delayed appeal and a notice of appeal. Appellant appeals his December 6, 2005 conviction for OVI. The appeal is untimely by almost 12 years.

{¶2} No brief or response opposing the motion for leave has been filed.

{¶3} “* * * [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.” App.R. 4(A)(1).

{¶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. 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.” App.R. 5(A).

{¶9} As reasons for failing to file his appeal in a timely fashion, appellant indicates that he was never advised of his appellate rights, including his right to court appointed counsel to file a direct appeal.

{¶10} Accepting appellant's statements are true, by waiting nearly 12 years since his conviction, clearly appellant was not diligent in protecting his appellate rights. During that time, appellant filed multiple appeals with this court, i.e. 2011-P-0040, 2014-P-0057, 2016-P-0009, 2016-P-0036, 2017-P-0005, 2017-P-0013, 2017-P-0066, and numerous pleadings with the trial court in this case and in other Portage County

Municipal Court cases. Thus, it is evident that appellant is aware of the appellate process and procedure.

{¶11} Accordingly, appellant's motion for leave to file a delayed appeal is hereby overruled.

{¶12} 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.

{¶13} 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; *State v. Fernandez*, 11th Dist. Trumbull No. 2017-T-0058, 2017-Ohio-7968, ¶9.