

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2019-L-066
JOSEPH P. BENE,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2016 CR 001197.

Judgment: Appeal dismissed.

Charles E. Coulson, Lake County Prosecutor, and *Jennifer A. McGee*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Joseph P. Bene, pro se, PID: A694-687, Lake Erie Correctional Institution, 501 Thompson Road, P.O. Box 8000, Conneaut, OH 44030 (Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} On July 16, 2019, appellant, pro se, filed a notice of appeal and motion for leave to file a delayed appeal. Appellant appeals from the trial court’s April 27, 2017 entry, and the May 22, 2017 nunc pro tunc entry. The court sentenced him to serve four and one-half years in prison, consecutive to his sentences in 16 CR 001198 and 17 CR 000168, for a total term of seven years after he pleaded guilty to burglary and attempted abduction.

{¶2} The appeal is untimely filed by over two years.

{¶3} Appellee filed a response in opposition to the motion on July 19, 2019.

{¶4} App.R. 5(A) provides, in relevant part:

{¶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 the delay in filing his appeal, appellant indicates: 1) he is a layman and needed assistance preparing his Notice of Appeal, motion, and other pleadings; 2) due to his confinement, he was kept in constant lock-down with limited movement so he could not research and prepare a timely appeal; 3) once he arrived at this “parent institution,” he was able to do research to learn how to file an appeal; and 4) he was recently able to get the assistance and understanding that he needed at the prison library to file his appeal.

{¶11} Appellant’s reasons might justify a reasonable delay of time in filing his appeal. However, given the length of time of over two years before initiating an appeal, it is evident that appellant was not diligent in taking the proper steps to protect his own rights.

{¶12} Thus, it is ordered that appellant's motion for leave to file a delayed appeal is hereby overruled, and the appeal is dismissed.

CYNTHIA WESTCOTT RICE, J.,

TIMOTHY P. CANNON, J.,

concur.