

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2019-L-169
HERBERT E. ANDERSON,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2009 CR 000410.

Judgment: Dismissed.

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

Herbert E. Anderson, pro se, PID: A572-384, Richland Correctional Institution, 1001 Olivesburg Road, P.O. Box 8107, Mansfield, OH 44905 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} On December 23, 2019, appellant, Herbert E. Anderson, pro se, filed a motion for leave to file a delayed appeal pursuant to App.R. 5(A). No notice of appeal was filed with the trial court.

{¶2} Appellant indicates in his motion that he appeals the trial court's November 5, 2019 judgment entry which denied his request for findings of fact and conclusions of law pursuant to Civ.R. 52. However, the motion sets forth reasons for not filing a timely appeal from an August 22, 2019 judgment entry denying his pro se

Writ of Error Coram Noblis, indicating that he did not receive notice of the entry until September 4, 2019.

{¶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. *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. The movant also shall furnish an additional copy of the notice of appeal and a copy of the motion for leave to appeal to the clerk of the court of appeals who shall serve the notice of appeal and the motions upon the prosecuting attorney.*” (Emphasis added.)

{¶9} Appellant has not complied with App.R. 5(A) because he failed to file a notice of appeal in the trial court concurrently with the filing of his motion for leave to appeal with this court. *See State v. Fisher*, 46 Ohio App.2d 279 (1975). In addition, appellant’s motion fails to advance reasons for filing an untimely appeal from the November 5, 2019 entry he is appealing.

{¶10} Thus, appellant’s pro se motion is overruled. This matter is dismissed.

{¶11} We note that appellant is not barred from filing a new motion for leave to appeal along with a notice of appeal that complies with the Ohio Rules of Appellate Procedure and the local rules of this court.

THOMAS R. WRIGHT, J.

MATT LYNCH, J.,

concur.