

[Cite as *State v. Evans*, 2010-Ohio-4090.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 09AP-1028
	:	(M.C. No. 2009 CR B 10273)
Walter C. Evans,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 31, 2010

Richard C. Pfeiffer, Jr., City Attorney, *Lara N. Baker*, Chief
Prosecutor and *Melanie R. Tobias*, for appellee.

Walter C. Evans, pro se.

ON MOTION

CONNOR, J.

{¶1} Defendant-appellant, Walter C. Evans ("appellant"), has filed a motion for leave to appeal from the judgment of the Franklin County Municipal Court, pursuant to App.R. 5(A). Plaintiff-appellee, the State of Ohio, has filed a response objecting to appellant's motion for leave to file a delayed appeal. For the following reasons, we deny appellant's motion for leave to file a delayed appeal.

{¶2} Appellant seeks leave to appeal from the judgment entry of conviction and sentence imposed by the Franklin County Municipal Court on July 17, 2009. On that date, while represented by counsel, appellant pled guilty to one count of violation of a protection

order. The trial court sentenced defendant to a period of community control. The judgment of conviction was journalized that same day. Appellant seemingly also seeks leave to appeal from the trial court's August 28, 2009 denial of his motion to withdraw his guilty plea.

{¶3} On August 18, 2009, appellant filed a notice of appeal regarding the July 17, 2009 judgment entry of conviction and sentence. In response, the State of Ohio filed a motion to dismiss, arguing the appeal was untimely. As a result, we dismissed the appeal. See *State v. Evans* (Oct. 28, 2009), 10th Dist. No. 09AP-794.

{¶4} Within a week of that dismissal, appellant filed the instant motion for leave to file a delayed appeal. The notice indicates he is appealing the trial court's July 17, 2009 judgment entry of conviction and sentence, as well as the trial court's August 28, 2009 judgment entry denying his motion to withdraw his guilty plea. Appellant asserts the following reasons for not filing a timely appeal: (1) his alleged miscalculation of the date when the appeal time began to run, claiming he believed time did not begin to run until the date he received the entry; (2) his receipt of the entry on July 21, 2009, four days after it was filed; (3) the failure of the trial court to advise appellant of his right to appeal and to advise him of the right to have appellate counsel appointed; and (4) the ineffectiveness of his trial counsel in failing to protect his right to appeal.

{¶5} App.R. 5(A) allows a defendant to file a motion for leave to file a delayed appeal after the expiration of the 30-day period provided by App.R. 4(A). Such a motion must set forth the reasons for the failure of a defendant to perfect an appeal as of right. The defendant has the burden of "demonstrating a reasonable explanation of the basis for failure to perfect a timely appeal." *State v. Cromlish* (Sept. 1, 1994), 10th Dist. No.

94APA06-855. "Lack of effort or imagination, and ignorance of the law * * * do not automatically establish good cause for failure to seek timely relief." *State v. Reddick* (1995), 72 Ohio St.3d 88, 91 (affirming denial of application to re-open appeal). The decision to grant or deny a motion for leave to appeal, pursuant to App.R. 5(A), rests within the sound discretion of the court of appeals. *State v. Morris*, 10th Dist. No. 05AP-1139, 2005-Ohio-6479.

{¶6} As stated above, one does not automatically establish good cause by claiming ignorance of the law. Thus, lack of knowledge of the law is not a sufficient reason to explain a failure to timely file a notice of appeal. See *State v. Shahan* (Mar. 15, 2005), 10th Dist. No. 05AP-114 (memorandum decision), citing *State v. Guinn* (Jan. 27, 2004), 10th Dist. No. 03AP-1223 (memorandum decision). Furthermore, a claim of ineffective assistance of counsel is an insufficient reason to grant a motion for leave to file a delayed appeal. *Guinn* at ¶5, citing *State v. Franks* (Nov. 26, 2002), 10th Dist. No. 02AP-1081 (memorandum decision).

{¶7} Although appellant's original notice of appeal was filed only two days after the expiration of the 30-day time period, given his legal background¹ and the surrounding circumstances, as well as the reasons set forth above, we find his arguments to be without merit. We conclude appellant has failed to provide a reasonable explanation for his failure to timely appeal and has failed to demonstrate that he is entitled to leave to file a delayed appeal pursuant to App.R. 5(A), as to the July 17, 2009 judgment entry.

¹ Appellant was permanently disbarred from practicing law in the state of Ohio on November 16, 1994 following his convictions for 20 felony offenses involving crimes such as theft, receiving stolen property, forgery, vandalism, and breaking and entering. See *Cincinnati Bar Assn. v. Evans*, 71 Ohio St.3d 6, 1994-Ohio-256.

{¶8} Additionally, appellant has also failed to provide a reasonable explanation for his untimeliness with respect to the August 28, 2009 judgment entry denying his motion to withdraw his guilty plea. Appellant did not timely file a second notice of appeal following the trial court's denial of his motion to withdraw his guilty plea. In fact, appellant did not file a notice of appeal with respect to this entry until November 3, 2009, which was after this court dismissed appellant's original appeal in case No. 09AP-794, and more than 60 days after the journalization of the trial court's entry. Appellant has provided no reasonable explanation as to why he did not attempt to do so sooner. Despite the fact that he was appearing pro se, at that point appellant should have been well aware of his right to appeal. Furthermore, the trial court indicated it was ruling on the motion to withdraw, despite the pending appeal, so that the complete record could be presented to the appellate court for review.

{¶9} For these reasons, we deny appellant's motion for leave to file a delayed appeal.

Motion for leave to file a delayed appeal denied.

SADLER and McGRATH, JJ., concur.
