

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2006-A-0006
ROBERT RANDALL DAVIS, SR.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 03 CR 91.

Judgment: Appeal dismissed.

Thomas L. Sartini, Ashtabula County Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Robert Randall Davis, Sr., pro se, PID: A452-344, Belmont Correctional Institution, P.O. Box 540, St. Clairsville, OH 43950 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} This matter is before this Court upon appellant’s motion for leave to file a delayed appeal and motion for appointment of counsel. Appellant appeals his conviction and sentence issued by the trial court on August 20, 2003. Appellant’s motion for delayed appeal and notice of appeal were filed on February 1, 2006.

{¶2} No brief or memorandum in opposition has been filed.

{¶3} This is appellant’s second attempt at filing a delayed appeal. In his first attempt, in Ashtabula App. No. 2005-A-0065, appellant’s motion for delayed appeal was

overruled and the appeal was dismissed on December 27, 2005. In that decision, this Court held: “[g]iven that over two years elapsed between the time of appellant’s conviction and sentence until the filing of his motion for leave to appeal, it is evident that appellant was not diligent in taking the proper steps to protect his own rights. Further, the reason submitted by appellant as the cause for the delay does not adequately justify waiting over two years to attempt to initiate a direct appeal. Surely, a defendant who is incarcerated in the state correctional institution must realize that he cannot wait over two years to file an appeal.”

{¶4} That same reasoning still holds true in the present appeal. In addition, in the present appeal, Appellant has not even met the minimum requirement of App.R. 5(A) by stating his reasons for failing to perfect his appeal as of right. And even if he had, this Court has already determined in his previous appeal that his reasons did not justify the delay in filing his appeal.

{¶5} Accordingly, it is ordered that appellant’s motion for leave to file a delayed appeal and motion for assignment of counsel are hereby overruled.

{¶6} Appeal dismissed.

WILLIAM M. O’NEILL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.