

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

STATE OF OHIO,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2010-T-0013</b>
NORRIS ANTHONY MILLS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2008 CR 0908.

Judgment: Appeal dismissed.

*Dennis Watkins*, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

*Norris Anthony Mills*, pro se, PID: A571-596, Mansfield Correctional Institution, P.O. Box 788, Mansfield, OH 44901 (Defendant-Appellant).

TIMOTHY P. CANNON, J.,

{¶1} On February 1, 2010, appellant, Norris Anthony Mills, filed a pro se notice of appeal from his judgment of conviction and sentence issued by the trial court on July 17, 2009. Thus, his appeal is untimely by almost six months. No motion for delayed appeal was filed pursuant to App.R. 5(A), but across the body of appellant’s notice of appeal he wrote the words: “Delayed Appeal.”

{¶2} Appellee, the state of Ohio, filed a motion to dismiss the appeal because it was untimely and appellant failed to comply with App.R. 5(A). Appellant did not file a motion for delayed appeal advancing reasons for the delay in filing his appeal.

{¶1} App.R. 4(A) states in part:

{¶2} “A party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed. \*\*\*”

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

{¶4} “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} “(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.*” (Emphasis added.)

{¶8} We find that appellee’s motion to dismiss has merit. Appellant has not complied with the foregoing rule since he has not filed a separate motion for leave to appeal concurrently with the filing of his notice of appeal which states his reasons for filing an untimely appeal. Without a motion before us, this court has nothing to review in terms of appellant’s reasons for filing his appeal in an untimely fashion.

{¶9} Thus, appellant has failed to invoke this court's jurisdiction. Accordingly, appellee's motion to dismiss is granted, and the appeal is dismissed as untimely. However, we note that appellant is not barred from filing a proper motion for leave to file a delayed appeal, pursuant to App.R. 5(A), which sets forth his reasons for filing an untimely appeal.

{¶10} Appeal dismissed.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.