

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

STATE OF OHIO,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2010-L-094</b>
JOSEPH H. GASTON, JR.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 09 CR 000380.

Judgment: Appeal dismissed.

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

*Joseph H. Gaston, Jr.*, pro se, PID: 581-130, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030-8000 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} On August 12, 2010, appellant, Joseph H. Gaston, Jr., filed a pro se motion for a delayed appeal, pursuant to App.R. 5(A), and for appointment of counsel along with his notice of appeal. Appellant is attempting to appeal his original judgment of conviction and sentence issued by the Lake County Court of Common Pleas on November 30, 2009. Thus, the appeal is untimely by almost eight months.

{¶2} No brief or response opposing the motion has been filed.

{¶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} “(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.”

{¶9} In his motion, appellant asserts that his appeal is untimely due to “his lack of knowledge in the law and his inability to litigate and pursue this appeal pro se.”

{¶10} While appellant’s reasons might explain some lapse in time in initiating his direct appeal, they do not justify a delay of nearly eight months between the time of appellant’s conviction and sentence until the filing of his motion for delayed appeal. We find that appellant was not diligent in taking the proper steps to protect his own rights.

{¶11} Thus, appellant’s pro se motion for delayed appeal and for appointment of counsel is hereby overruled, and the appeal is hereby dismissed, sua sponte.

{¶12} Appeal dismissed.

MARY JANE TRAPP, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.