

IN THE SUPREME COURT OF OHIO
2007

STATE OF OHIO,

Case No. 07-455

Plaintiff-Appellee,

-vs-

On Appeal from the
Franklin County Court
of Appeals, Tenth
Appellate District

TOBY WILCOX,

Court of Appeals
Case No. 05AP-972

Defendant-Appellant

**MEMORANDUM OF PLAINTIFF-APPELLEE IN OPPOSITION TO MOTION FOR
DELAYED APPEAL**

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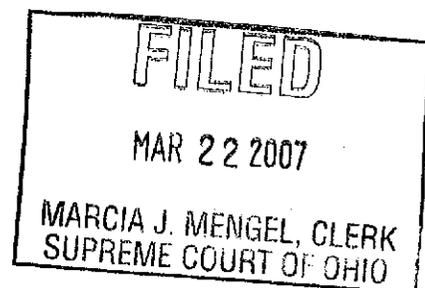
and

JENNIFER L. MALOON 0072791
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Assistant Prosecuting Attorney

COUNSEL FOR PLAINTIFF-APPELLEE

TOBY WILCOX, #505-534
S.O.C.F.
1724 State Route 728
P.O. Box 45699
Lucasville, Ohio 45699

DEFENDANT-APPELLANT, pro se



**MEMORANDUM OF PLAINTIFF-APPELLEE IN OPPOSITION TO MOTION FOR
DELAYED APPEAL**

On March 22, 2004, Appellant was indicted for six counts of aggravated murder with death penalty specifications and firearm specifications, one count of attempted aggravated murder with a firearm specification, two counts of kidnapping with firearm specifications, one count of aggravated burglary with a firearm specification, and one count of aggravated robbery with a firearm specification. All of the offenses were alleged to have occurred on May 29, 2003.

At the end of the State's case, the prosecutor dismissed the first, second, third and fifth specifications to counts four, five, and six of the indictment and requested that language alleging prior calculation and design with respect to the specifications attached to counts one, two, and three of the indictment be eliminated.

With respect to the death penalty specifications, the trial court instructed the jury on the three specifications pursuant to R.C. 2929.04(A)(7) and the specification pursuant to R.C. 2929.04(A)(5) attached to counts one, two and three of the indictment. The jury was instructed on the specification to R.C. 2929.04(A)(5) attached to counts four, five and six of the indictment.

On August 16, 2005, a jury returned guilty verdicts to all counts and specifications in the indictment. A mitigation hearing was held, and the jury recommended that appellant be sentence to a term of life imprisonment without parole.

On August 19, 2005, the court merged counts two, three and eight with count one and counts five and six with count four. The court sentenced appellant to life imprisonment without parole on both of the aggravated murder charges and to ten years on each of the four felony charges, along with three years on the firearm specification. All sentences were ordered to be served consecutive to one another.

Appellant filed a direct appeal in the Tenth District, alleging four assignments of error: (1) that the trial court erred in not giving a lesser included jury instruction for the offense of murder; (2) that his convictions were against the manifest weight of the evidence and that the convictions were not supported by sufficient evidence; (3) that the trial court improperly denied his motion to suppress statements; and (4) that DNA evidence is scientifically unreliable. The Tenth District rejected all of Appellant's arguments and affirmed the decision of the trial court. *State v. Wilcox*, 10th Dist. App. 05AP-972.

App.R. 5(A) requires a defendant to "set forth the reasons for the failure of the appellant to perfect an appeal as of right." App.R. 5(A) requires "a reasonable explanation of the basis for failure to perfect a timely appeal." *State v. Cromlish* (September 1, 1994), Franklin App. Nos. 94APA06-855, 94APA06-857, unreported. Defendant's motion for delayed appeal is without merit.

"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), 75 Ohio St.3d 88, 91 (affirming denial of application to reopen pursuant to App.R.26). The state respectfully submits that the reasons set forth in defendant's motion fail to establish good cause or a "reasonable explanation" for his failure to perfect a timely appeal from his convictions.

Neither the Ohio Revised Code nor the Appellate Rules provides Defendant a right to be advised of the rules for filing in the Ohio Supreme Court. Moreover, the issues that Defendant raises are without merit. Defendant raises no new issues in his attached Memorandum in Support of Jurisdiction that this court would consider to present questions with such constitutional substance or of such great public interest as would warrant further review by this Court. Defendant presents unremarkable propositions of law that would not make new law in

this State. The standards for reviewing Defendant's claims are well settled. Defendant does not set forth any conflict amongst the appellate courts that would justify plenary review by this Court. Since the facts of each case will differ, it is doubtful that defendant's fact-bound claims would serve as a vehicle for this Court to announce legal principles of statewide significance.

Therefore, defendant has failed to state adequate grounds for leave to file a delayed appeal. S.Ct.Prac.R. II(2)(A)(4)(a). Accordingly, the State respectfully requests that this Court deny the motion for delayed appeal.

Based on the foregoing, the state respectfully requests this Court to deny Defendant's motion for leave to file delayed appeal.

Respectfully Submitted,

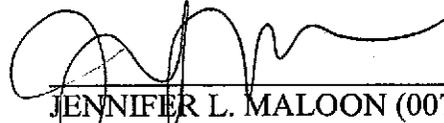
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was mailed by regular U.S. mail this day, March 22, 2007, to Toby Wilcox, #505-534, S.O.C.F., 1724 State Route 728, P.O. Box 45699, Lucasville, Ohio 45699.



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