

IN THE SUPREME COURT OF OHIO

09-0583

STATE OF OHIO, : S.Ct.C ASE NO. 09-0583
: :
PLAINTIFF-APPELLEE, : :
: : ON APPEAL FROM THE SEVENTH
: : APPELLATE DISTRICT COURT,
: : COLUMBIANA COUNTY, OHIO,
-VS- : : CASE NO. 08 CO 38
: :
: : MOTION FOR LEAVE TO FILE A
DENNIS CARPENTER, : : DELAYED APPEAL, PURSUANT TO
: : S.Ct. RULE II, SEC.2(A)(4)(a)
DEFENDANT-APPELLANT. : :
: : AFFIDAVIT OF INDIGENCY ATTACHED
: :
: : (FELONY APPEAL/CONVICTION)

MOTION FOR LEAVE TO FILE A DELAYED APPEAL

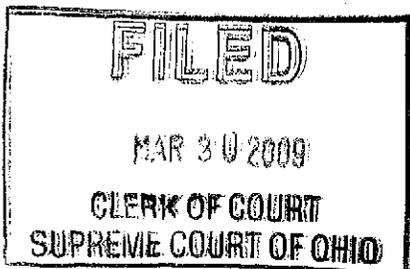
Now comes the DEFENDANT-APPELLANT-DENNIS CARPENTER, *En Propria Persona* capacity and respectfully moves this Court to issue an order GRANTING him leave to file a delayed appeal. And issue an order for said defendant to submit an MEMORANDUM IN SUPPORT OF JURISDICTION within the time ordered.

Defendant-Appellant moves this Court pursuant to S.Ct. II, Sec. 2(A)(4)(a), pertaining to felony cases, when time had expired to file a timely appeal within the 45 days required at S.Ct. Rule II, Sec.2(A).

For the reasons shown herein below in the Memorandum in Support, defendant requests that this motion be well taken, and SUSTAINED.

Respectfully submitted,

Dennis Carpenter
DENNIS CARPENTER #532-357
BeCI (P.O. BOX 540)
68518 BANNOCK RD. S.R. 331
ST.CLAIRSVILLE, OHIO 43950
DEFENDANT-APPELLANT, PRO SE



MEMORANDUM IN SUPPORT

Defendant-Appellant, DENNIS CARPENTER, respectfully moves this honorable Supreme Court of Ohio to issue an order granting said defendant's Motion for Leave to file a Delayed Appeal. In further, issue an order granting him to file an Memorandum in Support of Jurisdiction.

Defendant states that he was unable to file an appeal to this Court in the (45) days as required pursuant to S.Ct. II, Sec. 2(A).

Defendant asserts that he had filed an appeal in the SEVENTH Appellate District Court on the 3rd day ~~of~~ of November, 2008. Which his issues raised were denied on the 16th day of January, 2009. (Approximately (63) days prior to filing this delayed appeal).

Defendant states that issues and predicaments' happened which has prevented Mr. Carpenter from filing his appeal in this Court in the time required. Mr. Carpenter was in a safe environment, when he was residing in a dorm called "7" house, however due to over capacity, he was placed in a corrupted and non-supervised dorm setting, where his personal box was broken into, not once, but twice, which had his legal documents in. If this was not enough, he was then moved to another house called "6" house, where the same exact had happened. Due to Correctional Staff, HE was actually prevented from timely filing. This was only part of the problem. For approximately up to two weeks the institutional Law library was limited, and the copying machine was not in use, due to an inmate stealing the master-card-for-copies. Institutional Policy here at Belmont is very difficult to follow, as they change policies to their convenience delaying matters for inmates.

II. LEGAL BASIS

Although some Ohio Courts have refused to grant motions for leave to file a delayed appeal because of the undue lapse of time, others have allowed appeals long after the time for filing a direct appeal has expired. Compare *State v. Robinson*, NO. 04AP-713, 2004 WL 1945687 (Ohio CT. App. Sept. 2, 2004) (unpublished) (Holding that a three-and-a-half-year delay in filing a motion was unreasonable), with *State v. Simmons*, NO. 69238, 1997 WL 83124 (Ohio CT. App. Feb. 27, 1997) (unpublished) (Noting that a motion to file a delayed appeal had been granted more than FIVE years after the defendant pled guilty.

In the case before this Court, it has only been (20) months: (1) Year/(8) months. Far from the five years stated in *SIMMONS*.

In the case of *State v. Kramer*, supra [127 N.E. 2d. 62], the 'as general rule, before a defendant can secure the right of leave to Appeal from the judgment and sentence there must appear some substantial reason for failure to prosecute the appeal as a matter of right. It was further held that: "In our opinion, defendant met this requirement by demonstrating that he had to rely on his personal ability and experience, or lack thereof, in effecting his motion for leave to appeal, and, due to this lack of legal training and experience, it appears doubtful that in the time in which and appeal as of right must be perfected that he could have drafted and filed the documents necessary to carry forward the appeal, let alone discover the probable error on which to base his appeal.

Defendant asserts that the institutional records will show that his abilities are limited, and his medical/mental abilities

show that he was prevented from the understanding of the legal procedures, without the assistance of competent counsel.

Defendant-Appellant understands the difficulty of showing good cause for an appeal to be reviewed and considered by and through a delayed process, especially that of an an indigent-Defendant, an indigent Defendant in a State Correctional Institution without the proper resources. Appellant cites: **Douglas v. California**, 372 U.S. 353, 357, 83 S.Ct. 814(1963), the Court stated that the additional obstacles placed in the path of an indigent seeking to appeal a conviction did not "comport with fair procedure," but it explained the unfairness entirely in terms of inequality:

"THERE IS A LACKING THAT EQUALITY DEMANDED BY THE FOURTEENTH AMENDMENT WHERE THE RICH MAN, WHO APPEALS AS OF RIGHT, ENJOYS the benefit OF COUNSEL'S EXAMINATION INTO THE RECORD, RESEARCH OF LAW, AND MARSHALLING OF ARGUMENTS ON HIS BEHALF, WHILE THE INDIGENT, ALREADY BURDENED BY A PRELIMINARY DETERMINATION THAT HIS CASE IS WITHOUT MERIT, IS FORCED TO SHIFT FOR HIMSELF." Id. @357-358, 83 S.Ct. @816-17"

The defendant in this case at bar, said defendant is limited to the proper resources, that a rich man would benefit from, and receive the appropriate justice that the law was addressed to be. If he had the financial ability as a rich man, he would have filed his appeal in the appropriate time, and more-than-likely- he would not be behind a gate confined.

"WHERE A PERSON'S GOOD NAME, REPUTATION, HONOR, INTEGRITY IS AT STAKE BECAUSE OF WHAT THE GOVERNMENT IS DOING TO HIM, NOTICE AND AN OPPORTUNITY TO BE HEARD ARE ESSENTIAL. WILLIAM O. DOUGLAS, ~~WINSLOW~~ W. CONSTANTINEAU, 400 U.S. 433, 437 (1971).

In final thought, the defendant quotes a statement made by President THOMAS JEFFERSON, a letter addressed to George Hammond, May 29, 1792:

"NO NATION can ANSWER for perfect exactitude of PROCEEDINGS IN ALL THEIR INFERIOR COURTS. IT SUFFICES TO PROVIDE A SUPREME JUDICATURE WHERE ALL ERROR AND PARTIALITY WILL BE ULTIMATELY CORRECTED."

"A LAWYER WITHOUT BOOKS WOULD BE LIKE A WORKMAN WITHOUT TOOLS."

JEFFERSON, Feb. 5, 1769, letter to Thomas Turpin.

In this case, defendant does not have the knowledge, or even books to have the tools to follow and abide by the rules of this court or any other court. This is the reason why the defendant was unable to file his appeal in the time required.

IN CONCLUSION

The Defendant for the foregoing reasons, respectfully moves this honorable court to grant him leave to appeal, and issue an order for the memorandum in Support of Jurisdiction to be filed in the time issued.

Respectfully submitted,



DENNIS CARPENTER

#532-357

BeCI (P.O. BOX 540)

68518 BANNOCK RD. S.R. 331
ST. CLAIRSVILLE, OHIO 43950

Defendant, pro se

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing MOTION FOR LEAVE TO FILE DELAYED APPEAL, has been sent by regular U.S mail, to the COLUMBIANA COUNTY PROSECUTION OFFICE, @105 S.MARKET ST. LISBON, OHIO 44432, on this 23 day of MARCH, 2009.

Dennis Carpenter

DENNIS CARPENTER
#532-357
BeCI (P.O. BOX 540)
68518 BANNOCK RD. S.R. 331
ST.CLAIRSVILLE, OHIO 43950
Defendant-Appellant, Pro se

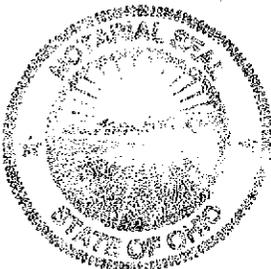
cc COLUMBIANA COUNTY PROSECUTOR
(1-TRUE COPY)

SUPREME COURT OF OHIO
CLERK OF COURT
(1-ORIGINAL)

DEFENDANT-PRO SE APPELLANT-DENNIS CARPENTER

SWORN TO ME and SUBSCRIBED IN MY PRESENCE, A NOTARY PUBLIC,
FOR BELMONT COUNTY, STATE OF OHIO, this 22 DAY OF March,
2009.

[SEAL]



Charmyn L. Doty
Notary Public
In and for the State of Ohio
My Commission Expires
12-19-2012

Charmyn L. Doty
NOTARY PUBLIC

IN THE SUPREME COURT OF OHIO

STATE OF OHIO)
BELMONT COUNTY) ss:

AFFIDAVIT OF DELAYED APPEAL OF DENNIS CARPENTER.

I, DENNIS CARPENTER, being duly cautioned and sworn, depose and state the following:

1. That I am the Defendant-Appellant, DENNIS CARPENTER herein, whom is presenting this appeal and motion by and through Pro se capacity,
 2. That this appeal is being presented and carried out of the seventh Appellate District Court, COLUMBIANA COUNTY, OHIO CASE NO. 08 co 38, entered on the 16th day of January, 2009; a Delayed appeal which was denied;
 3. That the issues presented and statements made in the attached Motion for leave to file Delayed appeal, are true, correct and to the best of my knowledge.
 4. That the issues presented for appeal are pertaining to MERIT and CONSTITUTIONAL QUESTION.
 5. That if not for the destruction of my belongings an appeal would have been filed in time.;
 6. That the issue of mental capacity; in addition medical indifferences are in question to his ability and experience to file such an appeal or Motion for delay.
 7. That all the above and statements made within the MOTION FOR LEAVE are true and correct.
- FURTHER, APPELLANT AFFAINT SAYETH NAUGHT.

Dennis Carpenter Pro se
DENNIS CARPENTER
AFFAINT-PRO SE

SWORN BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 22 DAY OF

March, 2009



Chamyon L. Doty
Notary Public
In and for the State of Ohio
My Commission Expires
12-19-2012

Chamyon L. Doty
NOTARY PUBLIC

bk

STATE OF OHIO) IN THE COURT OF APPEALS OF OHIO

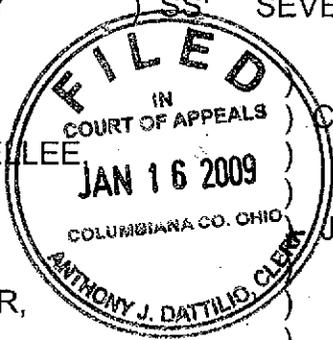
COLUMBIANA COUNTY) SS: SEVENTH DISTRICT

STATE OF OHIO,)
PLAINTIFF-APPELLEE) CASE NO. 08 CO 38

- VS -)
JUDGMENT ENTRY

DENNIS C. CARPENTER,

DEFENDANT-APPELLANT.)



On July 24, 2007 appellant was sentenced to a term of 24 months of imprisonment after he pled guilty to domestic violence. He was credited with 104 days spent in the County Jail.

On November 3, 2008, nearly 16 months later, he filed a notice of appeal directed to the sentencing entry. Since the notice was not accompanied by a motion for leave to file a delayed appeal, this Court granted him 30 days to file a motion in accordance with App.R. 5(A). On December 17, 2008 he filed the required motion.

In support of his motion appellant states that had he been aware of errors in his sentencing he would have filed a timely appeal. Also, he avers that the law library at the institution remains closed for "an immense amount of time." Appellant then makes a general statement that constitutional error occurred in his case.

A review of the underlying docket for appellant's criminal case reveals that since his imprisonment, appellant filed two separate motions for judicial release, which have been denied by the trial court. Appellant is aware of available post sentence relief for which he may file in an attempt to obtain his release or review of his sentence. His

assertion that he only recently was "advised" that his sentence was "inappropriate and unconstitutional" is not a basis to grant a delayed appeal in this case.

Motion for delayed appeal denied. Appeal sua sponte dismissed.

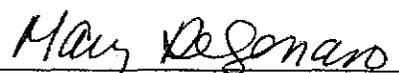
Costs taxed against appellant.



JUDGE GENE DONOFRIO



JUDGE CHERYL L. WAITE



JUDGE MARY DeGENARO