IN THE SUPREME COURT OF OHIO

ORIGINAL

STATE OF OHIO,	:	CASE NO. 09-2218
Plaintiff-Appellee,	:	On Appeal from the Franklin County Court of Appeals Tenth Appellate District.
vs.	:	
TORRANCE C. PILGRIM,	:	CA Case No. 08AP-993
Defendant-Appellant.	:	

NOTICE OF APPEAL OF APPELLANT TORRANCE C. PILGRIM
RULE 4, Section 4(B), RULES OF PRACTICE

TORRANCE C. PILGRIM A589102
HOCKING CORRECTIONAL FACILITY
16759 Snake Hollow Road
Nelsonville, Ohio 45764
(740) 753-1917 Fax 753-4277

DEFENDANT-APPELLANT, PRO SE

RECEIVED
DEC 29 2009
CLERK OF COURT
SUPREME COURT OF OHIO

RON O'BRIEN and JOHN H. COUSINS, IV
373 South High Street - 13th Floor
Columbus, Ohio 43215

COUNSELS FOR APPELLEE, STATE OF OHIO

FILED
DEC 29 2009
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF DENIAL OF COURT OF APPEALS TO CERTIFY A CONFLICT

Appellant, Torrance C. Pilgrim herby gives notice of the Tenth District Court of Appeal's denial of his motion to certify a conflict. The Notice and Memorandum Decision was received by Appellant on Monday, December 21st, 2009.

Hocking Correctional Facility will not permit inmates to send out mail until they have sufficient postage in their personal account. Appellant is only allowed to have ten dollars per month in his personal account. Anything over that amount is cruelly confiscated by the State to pay towards the costs of court and the ten-thousand dollar fine imposed on appellant at sentencing. Therefore, unless appellant can get a friend to sent this notice to The Court, he will be unable to mail this noticr until the week of January 10th, 2010, when 'State Pay' is posted to his account. This notice is being prepared on Wednesday, December 23, 2009.

This erroneous and prejudicial denial raises a constitutional question and is of public or great general interest.

Torrance C. Pilgrim

Torrance C. Pilgrim, pro se

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Denial has been sent, via regular U.S. Mail to Ron O'Brien and John H.Cousins IV; 373 South High Street, 13th Floor, Columbus, Ohio 43215.

Torrance C. Pilgrim

Torrance C. Pilgrim, pro se

IX

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
2009 DEC 15 PM 12: 08
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 08AP-993 (C.P.C. No. 08CR-04-2691)
Torrance C. Pilgrim,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

JOURNAL ENTRY

For the reasons stated in the memorandum decision of this court rendered herein on December 15, 2009, it is the order of this court that defendant's motion for reconsideration and motion to certify a conflict, are denied. Costs assessed to defendant.

BRYANT, KLATT & CONNOR, JJ.

By _____
Judge Peggy Bryant

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
2009 DEC 15 PM 12:07
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 08AP-993 (C.P.C. No. 08CR-04-2691)
Torrance C. Pilgrim,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

MEMORANDUM DECISION

Rendered on December 15, 2009

Ron O'Brien, Prosecuting Attorney, and *John H. Cousins, IV,* for appellee.

Torrance C. Pilgrim, pro se.

ON MOTION FOR RECONSIDERATION
AND MOTION TO CERTIFY A CONFLICT

BRYANT, J.

{¶1} Defendant-appellant, Torrance C. Pilgrim, filed two motions on October 29, 2009: (1) pursuant to App.R. 25(A), a motion to certify a conflict between this court's decision and multiple other decisions of various courts, and (2) pursuant to App.R. 26(A), a motion that we reconsider our decision rendered October 8, 2009 in which we affirmed a judgment of the Franklin County Court of Common Pleas finding him guilty, pursuant to jury verdict, of one count of possession of crack cocaine in violation of R.C. 2925.11.

A. Motion to Certify a Conflict

{¶2} Section 3(B)(4), Article IV, Ohio Constitution, governs motions seeking an order to certify a conflict. According to that section, a conflict shall be certified "[w]henever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with the judgment pronounced upon the same question by any other court of appeals of the state." See also App.R. 25; S.Ct.Prac.R. 4.

{¶3} Before a case can be certified to the Supreme Court of Ohio, three conditions must be satisfied. *Whitelock v. Gilbane Bldg. Co.* (1993), 66 Ohio St.3d 594, rehearing denied by *Whitelock v. Cleveland Clinic Found.* (1993), 67 Ohio St.3d 1420. Initially, "the certifying court must find that its judgment is in conflict with the judgment of another district and the asserted conflict *must* be 'upon the same question.' " Id. at 596. Next, "the alleged conflict must be on a rule of law—not facts." Id. Finally, "the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals." Id. "*Factual* distinctions between cases do not serve as the basis for conflict certification." (Emphasis sic.) Id. at 599.

{¶4} Before we can consider whether defendant's motion to certify a conflict meets the three-prong test set forth in *Whitelock,* we must examine its timeliness. Pursuant to App.R. 25(A), a motion to certify a conflict must be filed either before the court's judgment is journalized or within ten days after the court announces its decision, whichever is later. Defendant's motion was not filed before the judgment of this court was journalized on October 8, 2009. To meet the requisites of App.R. 25(A), then, defendant's

motion had to be filed within ten days after the court announced its decision on October 8, 2009. Defendant's motion was filed October 29, 2009.

{¶5} Moreover, this court may not enlarge the time for filing a motion to certify a conflict. App.R. 14(B) (stating "[t]he court may not enlarge or reduce the time for filing a notice of appeal or a motion to certify pursuant to App.R. 25"); *State v. Rodgers* (2006), 10th Dist. No. 05AP-446 (memorandum decision); *State v. Koelling* (June 29, 1995), 10th Dist. No. 94AP-866 (memorandum decision) (stating that "[s]ince defendant did not comply with the time limit prescribed by App.R. 25(A), the motion to certify must be denied, as the ten-day time limit cannot be enlarged").

{¶6} Because defendant's motion is untimely, we deny it.

B. Motion for Reconsideration

{¶7} The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that either was not considered at all or was not fully considered by the court when it should have been. *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, 143. An application for reconsideration is not designed for use in instances where a party simply disagrees with the logic or conclusions of the court. *State v. Owens* (1996), 112 Ohio App.3d 334.

{¶8} An application for reconsideration "shall be made in writing before the judgment or order of the court has been approved by the court and filed by the court with the clerk for journalization or within ten days after the announcement of the court's decision, whichever is later." App.R. 26(A). Because our decision was announced on October 8, 2009, defendant's motion should have been filed by October 18, 2009 at the

latest; defendant did not file his motion until October 29, 2009. An untimely motion for reconsideration nonetheless can be entertained if it raises an issue of sufficient importance to warrant extending the ten-day limit. *State v. Boone* (1996), 114 Ohio App.3d 275, 277, citing *Carroll v. Feiel* (1981), 1 Ohio App.3d 145.

{¶9} Initially, we note defendant posits no reason for his untimely filing except that he did not learn of the court's decision until October 14, 2009. Even so, defendant's motion was not filed within ten days from that date. Moreover, even if we consider defendant's motion, it lacks merit.

{¶10} Counsel represented defendant in his appeal and assigned six errors. In addition, defendant was allowed to file a pro se brief where he raised four additional assignments of error. To the extent defendant seeks to raise yet additional assignments of error through his motion for reconsideration, his avenue for relief is an application for reopening. To the extent he seeks to raise matters outside the record on appeal, his avenue for relief is a petition for post-conviction relief. To the extent he simply disagrees with this court's resolution of his assigned errors, the motion is not appropriate. *Owens*, supra.

{¶11} Accordingly, defendant's motion for reconsideration is denied.

Motion to certify conflict denied;
motion for reconsideration denied.

KLATT and CONNOR, JJ., concur.

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	CASE NO. 09-2218
Plaintiff-Appellee,	:	On Appeal from the Franklin County Court of Appeals Tenth Appellate District.
vs.	:	
TORRANCE C. PILGRIM,	:	CA Case No. 08AP-993
Defendant-Appellant.	:	

****

MOTION FOR APPOINTMENT OF COUNSEL OR LEGAL ADVISOR

Defendant-Appellant, Torrance C. Pilgrim, respectfully requests this Court to appoint counsel or in the alternative, a legal advisor in the above captioned case. As attested by the Affidavit of Indigency filed with Defendant-Appellant's Notice of Appeal, He is unable to retain counsel and thus requests the services of an attorney at State expense or counsel that can be reimbursed in the same manner as Appellant is being forced to pay court costs and fines in this cause.

Respectfully submitted,

Torrance C. Pilgrim

Torrance C. Pilgrim, pro se
A589102 - B76
16759 Snake Hollow Road
Nelsonville, Ohio 45764