

ORIGINAL

IN THE SUPREME COURT OF OHIO

10-0233

State of Ohio,  
Plaintiff-Appellee,

S. Ct. Case No. \_\_\_\_\_  
C.A. Case No. C090863

vs.

ON APPEAL FROM THE HAMILTON COUNTY  
COURT OF APPEALS, FOR THE FIRST  
DISTRICT.....

Jorge Clark Garcia,  
Defendant-Appellant.

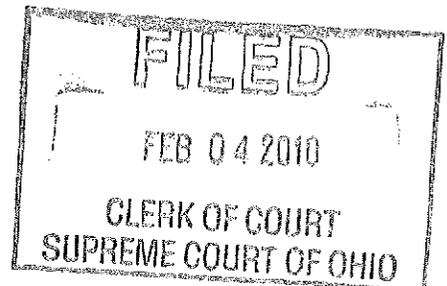
MEMORANDUM IN SUPPORT OF JURISDICTION BY  
APPELLANT JORGE CLARK GARCIA

Jorge Clark Garcia (527-746)  
Ross Correctional Institution  
Post Office Box 7010  
Chillicothe, Ohio 45601

(Appellant)

Joseph T. Deter's  
Hamilton County Prosecuting Attorney  
230 East Ninth Street, Suite 4000  
Cincinnati, Ohio 45202

(Appellee's)



ORIGINAL

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Entry Overruling motion for Leave to Appeal, filed December 22, 2010

EXPLANATION OF WHY THIS CASE IS A CASE OF  
GREAT GENERAL INTEREST AND INVOLVES A  
SUBSTANTIAL CONSTITUTIONAL QUESTION

This case raise one question, whether a appellant has the right to notice of appellate rights, and the right to have counsel appointed to him for appeal, and if the trial, or sentencing court fails to give notice to him, that he has right to delayed appeal, when genuine issue for appeal exists. In Douglas v. People of State of California, 372 U.S. 353, 357, 83 S. Ct. 814, 9 L. Ed 2d 811 (1963), that imposes upon the state a duty to warn every person convicted of crime of his right appeal, and his right to prosecute appeal without expense to him by counsel appointed to him for purpose of appeal.

## STATEMENT OF THE CASE AND FACTS

This matter raises the argument of whether a defendant has the right to notice of his right to take appeal, and without information of appellate rights by the sentencing court of right to appeal his conviction, and right to counsel without costs for purpose of the appeal. Whether, or not he is liable for not filing a timely timely appeal, and his right to a delayed appeal, when an appeal of right exists.

Appellant was sentenced on July 17, 2006, December 8, 2009 [he] filed his notice for delayed appeal, basing his reasoning for delay on the fact he is a first time offender, and Ohio harbors a law that states a person who has never been incarcerated in this state shall not receive the maximum sentence, and that he was not informed of his appellate rights, or aware of the appellate process due failure of the Court to provide information of appellate rights. Appellant, Mr. Garcia motion for delayed appeal was overruled December 22, 2009, and now Appellant seeks leave for review from this Honorable Court of whether, or not a criminal defendant demonstrates a true and justified reason for delayed filing when he presents a sentencing court failed to inform him of appellate rights, and that appeal was not sought in a timely manner due to his lack of knowledge, and information of.

A R G U M E N T

Proposition of Law No. : I: An appellant properly justifies reason to file his appeal of right when the trial court fails to notify Appellant of any appellate rights, and failure of notification is the reason appellant lacked knowledge to make timely appeal.

It has been the practice of our Court's to grant leave to appeal in an expanded, and or, delayed manner, pursuant to Appellate Rule 5 (A) to a person(s) who enters a guilty plea and no longer has counsel, and or, was not instructed after his sentence was imposed of any right to take appeal, or have counsel appointed for an appeal. In this matter Appellant, Mr. Garcia was sentenced and thereafter not informed of any right to prosecute appeal to that sentence if he wished, before leaving the Court, or delivery to prison.

Our United States District Court, for the Southern District of Ohio in the matter of **Wolfe v. Randle** (S.D. Ohio 2003), 267 F. Supp. 2d 743: "held stern, it Magistrate recommendation"; (that due process is offended when a person who pleads guilty is kept completely ignorant of their appellate rights); citing **Peguero v. U.S.**, 526 U.S. 23, 119 S. Ct. 961, 143 L. Ed 2d 18; **White v. Johnson**, 180 F. 3d 648, 652 (5th Cir 1999)). The United States District Court of Ohio, further directed in **Wolfe @ 748** that in order for a defendant to be properly informed, a defendant must be told of his right to appeal, and his right to have assistance of counsel for that appeal, citing **White**, 180 F. 3d @ 652;

and **Norris v. Wainwright**, 588 F. 2d 130, 135.

Further, the right of appeal is a mere illusion if the indigent defendant does not know such a right exists. (yes ?). **Marrow v. United States** (C.A. 9 1985), 722 F. 2d 525, 530. In counter, due process demands the informing of a created waiver to appellant rights upon the defendant by a trial courts Judiciary Officier, or Honorable Court.

Here the question is whether or not, a appellant has the right to appeal when an appeal of right exists in a delayed manner, when by the Courts own negligence he was denied right to a timel appeal, due to the fact a trial court failed to make notification to him of any right to the appellate process.

C O N C L U S I O N

For the above given reasons, your [Appellant, Mr. Garcia prays upon this Honorable Court to grant jurisdiction, wherein the issues can be argued and resolved in further scheduled proceedings.

Respectfully submitted,

/s/ Jorge Garcia

Jorge C. Garcia (527-746)  
Ross Correctional Inst.  
Post Office Box 7010  
Chillicothe, Ohio 45601

C E R T I F I C A T E   O F   S E R V I C E

I hereby certify that a true and correct copy of the above was by regular U.S. mail to the Appellee's counsel, Joseph T. Deter's, at their last known address of record on this 1 day of February, 2010.

Jorge Garcia

A P P E N D I X

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,

APPEAL NO. C-090863  
TRIAL NO. B-0602213-E

Appellee,

vs.

ENTRY OVERRULING MOTION  
FOR LEAVE TO APPEAL

JORGE CLARK GARCIA,

Appellant.

This cause came on to be considered upon the *pro se* motion of the appellant for leave to file a delayed appeal and upon the memorandum in opposition.

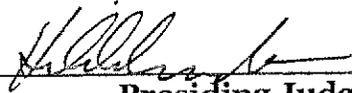
The Court finds that the motion is not well taken and is overruled as the appellant has failed to provide sufficient reasons for failure to perfect an appeal as of right. In addition, there was an agreed sentence. See R.C. 2953.08(D).

Further, all other pending motions are overruled as being moot.

**To The Clerk:**

Enter upon the Journal of the Court on DEC 22 2009 per order of the Court.

By: \_\_\_\_\_



Presiding Judge

(Copies sent to all counsel)