IN THE SUPREME COURT OF OHIO

ORIGINAL
ORIGINAL

STATE OF OHIO,

APPELLEE,

10-1362

ON APPEAL FROM THE FRANKLIN COUNTY
TENTH APPELLATE DISTRICT COURT
OF APPEALS

VS

COURT OF APPEALS CASE NO.10- AP398

SANTI GRIPPER,

APPELLANT.

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT
SANTI GRIPPER

FRANKLIN COUNTY PROSECUTOR RON O'BRIEN
373 south high street
columbus, ohio 43215
state of Ohio/Appellee

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SANTI GRIPPER #578-699
ROSS CORRECTIONAL INSTITUTION
P.O. BOX 7010
CHILLICOTHE, OHIO 45601
APPELLANT/PRO SE

FILED
AUG 30 2010
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SUPREME COURT OF OHIO

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Opinion Of The Franklin County Court Of Appeals (July 20, 2010).....1

EXPLAINATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUITIONAL QUESTION.

To begin, defendant ask this court " does a trial court have to inform a defendant who **pleads guilty** his right to an appeal with the assistance of counsel"? According to the United States constitution and United States Supreme Court precedent a trial court must inform a defendant who pleads guilty of his right to appeal and his right to effective assistance of appellate counsel. Douglas V California(1963) 372 U.S. 353.

The defendant was denied due process and his right to appellate counsel when the trial court failed to inform the defendant of his right to appeal and his right to appellate counsel to file a timely notice of appeal. Nor did defendant's counsel inform him that such right exist. As a result, defendant was subjected in filing a delayed appeal pursuant to Ohio Appellate Rule 5(A). Defendant gained knowledge of his appellate rights via inmate legal law library clerks.

In addition, federal courts have found that " due process is offended when a defendant who pled guilty is kept completely ignorant of his appellate rights". See e.g. Wolfe V Randle(S.D. Ohio 2003) 267 F.Supp2d 743,746 citing Peguero V United States (1999) 526 U.S. 23. Although " adefendant is not necessarily denied a constitutional right when a state court denies a request for a delayed appeal. . . . due process rights are implicated when a delayed appeal is the result of a lower court's failure to ensure that an indigent defendant's appellate rights are protected." Wolfe, 267 F.Supp2d at 747. In concluding this matter, defendant

asks this court to reinstate his appellate rights.

Statement Of The Case And Facts.

On May 21, 2008, defendant pled guilty to one count of murder with a firearm specification and received a prison term of 16 years to life in prison. On April 28, 2010, defendant filed his motion for leave to file a delayed appeal in the court of appeals. Subsequently, on July 20, 2010 the court of appeals denied defendant's motion for delayed appeal.

Proposition Of Law No.One

Defendant Was Denied Due Process Under The U.S. Constitution When The Trial Court And Counsel Failed To Inform Defendant Of His Appellate Rights And His Right To Court Appointed Appellate Counsel.

The decision to grant or deny a motion for leave to file a delayed appeal under Ohio Appellate Rule 5(A) is solely within the discretion of the court of appeals. State V Fisher(1988) 35 Ohio St3d 22. Defendant asserts that when he pled guilty, he was never informed by the trial court or counsel concerning his right to appeal with the assistance of appeallate counsel. The court in Wolfe V Randle addressed the requirements of notice: In order to be properly informed, a defendant must be told of his right to appeal, the procedures and timelimits involved in proceeding with that appeal,and the right to have the assistance of appointed counsel for that appeal. Further, a defendant cannot base a claim on the court's failure to inform him of his appellate rights if he has personal knowledge of these rights. Wolfe supra at 748.

Nothing in the court's journal entry or the plea hearing transcript

reflects that the trial court informed defendant of his right to appeal. Indeed, a constitutional violation occurs when a criminal defendant is denied his right to appeal because he lacked knowledge of that right, and both the trial court and his counsel failed to advise him of his appellate rights. Hall V Yanai(6th Cir 2006) 197 Fed Appx 459 citing Goodwin V Cardwell(6th Cir 1970) 432 F2d 521, 522-23; Evitts V Lucey(1985) 469 U.S. 387, 396-97.

An indigent defendant is denied equal protection of the law where the merits of an appeal as of right are decided without benefit of counsel. Douglas, 372 U.S. 353. In Halbert V Michigan, the U.S. Supreme Court affirmed that the due process and equal protection clauses required appointment of counsel for a convicted indigent defendant who sought appellate review in the state court of appeals. The court found that the defendant's plea did not waive his due process and equal protection rights to appointed counsel. Halbert V Michigan(2005) 545 U.S. 605. In addition, the supreme court has ruled that " where the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request". Swenson V Bosler(1967) 386 U.S. 258, 260.

In concluding, the defendant did not know when he pled guilty that his right to appeal was available to him,and that trial counsel and the trial court failed to advise him of his rights. Defendant respectfully submits that this court reinstate his appellate rights.

Conclusions

For the reasons stated above this court should accept jurisdiction and proceed on the merits for further briefing.

Respectfully submitted,

Santi Gripper/Pro Se

Santi Gripper 578-699
Santi Gripper,
#578-699

Certificate of Service

I hereby certify a copy of the foregoing "Motion, and Memorandum" was delivered to Franklin County Prosecuter, by regular United States of America's mail.

The address in question is as followed: 373 South High St. Columbus, Oh 43215 on August 25,2010.

Santi Gripper 578-699
Santi Gripper,
#578-699

A.P.P.E.N.D.I.X

FILED
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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 10AP-398
v.	:	(C.P.C. No. 07CR-7182)
Santi Gripper,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

MEMORANDUM DECISION

Rendered on July 20, 2010

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Santi Gripper, pro se.

ON MOTION FOR DELAYED APPEAL

KLATT, J.

{¶1} Defendant-appellant, Santi Gripper ("appellant"), seeks leave to file a delayed appeal pursuant to App.R. 5(A). On May 21, 2008, appellant entered a negotiated guilty plea to one charge of murder with the specification and received a jointly-recommended prison term of 16 years to life in prison. Appellant was represented by counsel at the sentencing hearing. Appellant did not file a timely notice of appeal in this court.

{¶2} On April 28, 2010, appellant filed this motion for leave to file a delayed appeal asserting that he had never been informed of his right to appeal his sentence and conviction. Appellant indicates further that, at some time, he learned of his right to appeal, sought assistance from inmate law library clerks and filed this appeal. Appellant offers no other explanation for his two-year delay in filing this motion.

{¶3} App.R. 5(A) allows a defendant to file a motion for leave to file a delayed appeal in a criminal case after the expiration of the 30-day deadline mandated in App.R. 4(A). App.R. 5(A) does not permit "unlimited access to appellate courts." *State v. Saaty* (Dec. 14, 2000), 10th Dist. No. 00AP-1180 (memorandum decision). Rather, the defendant must provide a "reasonable explanation for failure to perfect a timely appeal." Id., citing *State v. Cromlish* (Sept. 1, 1994), 10th Dist. No. 94APA06-855; *State v. Malkowski* (Mar. 14, 2002), 10th Dist. No. 01AP-1469 (memorandum decision).

{¶4} A pro se defendant is obligated to take affirmative steps to protect available appellate rights. *State v. Wolford* (Jan. 20, 2005), 10th Dist. No. 04AP-1238 (memorandum decision). Thus, this court denied a defendant's motion for delayed appeal filed five months after his conviction. *State v. Garrard* (Feb. 10, 2005), 10th Dist. No. 04AP-1384 (memorandum decision). This court stated that the substantial lag in the filing of his motion for delayed appeal, without justifiable explanation, was unreasonable. Under this same rationale, this court denied a defendant's motion for delayed appeal filed six months after his conviction. *State v. Poindexter* (Jan. 24, 2002), 10th Dist. No. 01AP-1311 (memorandum decision).

{¶5} Appellant fails to provide a justifiable reason for filing his motion approximately two years after his conviction. Further, appellant does not explain when he

learned that he could have appealed from his guilty plea. The substantial lag in appellant filing his motion for delayed appeal, without justifiable explanation, is unreasonable and weighs against our granting the motion.

{¶6} Accordingly, we conclude that appellant had not provided sufficient reasons to support his App.R. 5(A) motion for delayed appeal. Therefore, appellant's motion is denied.

Motion for delayed appeal denied.

BROWN and FRENCH, JJ., concur.