ORIGINAL

IN THE SUPREME COURT OF OHIO

10-1897

SYLVESTER J. LAWSON II,
APPELLANT,

V.

THE STATE OF OHIO,
APPELLEE.

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

COURT OF APPEALS
CASE NO. C-080877

MOTION FOR DELAYED APPEAL PURSUANT TO S. Ct. Prac. R. II, Section 2(A)(4)(a)

SYLVESTER J. LAWSON II, PRO SE#

No. A547-160

Chillicothe Corr. Inst.

P.O. Box 5500

Chillicothe, Ohio 45601

APPELLANT

JOSEPH DETERS

PROSECUTING ATTORNEY

SCOTT HEENAN (0075734 P)

Assistant Prosecuting Attorney

230 East Ninth Street, Suite 4000

Cincinnati, Ohio 45202

Counsel for Appellee, Hamilton County Prosecuters Office

FILED
NOV 03 2010
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
NOV 03 2010
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

SYLVESTER J. LAWSON II, APPELLANT,	ON APPEAL FROM THE HAMILTON COUNTY COURT OF APPEALS, FIRST DISTRICT
V.	COURT OF APPEALS CASE NO. C-080877
THE STATE OF OHIO, APPELLEE.	

MOTION FOR DELAYED APPEAL PURSUANT TO S. Ct. Prac. R. II, Section 2(A)(4)(a)

Now comes appellant, Sylvester J. Lawson II, pursuant to S. Ct. Prac. R. II, Section 2(A)(4)(a), and respectfully seeks to file a delayed appeal of the judgment entered September 3, 2010, by The Hamilton County Court of Appeals, First Appellate District.

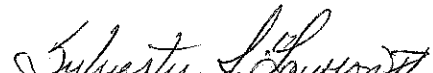
The appellant asserts that he entrusted the forwarding of his legal mail to prison mailroom officials whose delay in mailing his legal mail prejudiced him immensely, and that that delay was an uncontrollable fault by him. The facts supporting the Motion are set forth in the attached affidavit and exhibits in support of affidavit.

Respectfully submitted,

Sylvester J. Lawson II
P.O. Box 5500
Chillicothe, Ohio 45601

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion for Delayed Appeal was mailed via ordinary U S mail on this 1st day of November, 2010 to the Hamilton County Prosecutor



Sylvester J Lawson II
(A547-160)
Post Office Box 5500
Chillicothe, Ohio 45601

IN THE SUPREME COURT OF OHIO

SYLVESTER J. LAWSON II, APPELLANT,	ON APPEAL FROM THE HAMILTON COUNTY COURT OF APPEALS, FIRST DISTRICT
V.	
THE STATE OF OHIO, APPELLEE.	COURT OF APPEALS CASE NO. C-080877

Affidavit of Sylvester J. Lawson II in support OF Motion For Delayed Appeal

Now comes Defendant-Appellant, Sylvester J. Lawson II, and after being duly sworn, states as follows:

1. I am the same Sylvester J. Lawson II who is the appellant in a criminal action styled, STATE OF OHIO V. SYLVESTER LAWSON, Hamilton County Court of Appeals, First District, Case No. C- 080877.

2. I have read the Motion for Delayed Appeal, pursuant to S. Ct. Prac. R. II, Section 2(A)(4)(a), and the facts and the statements therein are true and accurate to the best of my knowledge information and belief.

3. My Motion For Delayed Appeal, pursuant to S. Ct. Prac. R. II, Section 2(A)(4)(a), is brought before the Court for a legitimate and proper purpose, and not to cause undue litigation and expense, or to needlessly burden the Court, and I believe that I am entitled to the relief sought therein.

4. On October 12, 2010, I deposited my Notice of Appeal, Memorandum in Support of Jurisdiction, Motion to Waive S. Ct. Prac. R. III, Section1(C), and Affidavit of Indigency (hereinafter legal mail) for mailing to the Supreme Court of Ohio. (See Exhibit A)

5. That the officials of the institutions mailroom failed to mail my legal mail until October 14, 2010. (See Exhibit A)

6. Because of these extraordinary circumstances the Clerk of The Supreme Court of Ohio did not receive my legal mail until October 19, 2010, one day late. (See Exhibit A).

7. The unanticipated delay by the Mailroom officials not only deprived the appellant of the " Certified First-Class Postal Service" that was pre-paid for, but caused a great deal of prejudice to the appellant in this case.

8. Federal Rule Of Appellate Procedure Rule 4(c)(1) states " [I]f an inmate confined in an institution files a notice of appeal in either a Civil or Criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing.

9. I hereby certify that the attached exhibits are true and accurate copies of the originals.

The undersigned hereby certifies under oath that he has read the foregoing Affidavit and all the information therein is true to the best of my knowledge.

Further Affiant sayeth naught.

Sylvester J. Lawson II

Sylvester J. Lawson II/Affiant

Sworn to, or affirmed, and subscribed in my presence this 29 day of October, 2010.

Angela Ivey

Notory Public

My commission expires: 8/11/2013

CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

LAWSON 547-160 USA-1

Postage	$ 1.90
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 7.00

CHILLICOTHE OH Postmark Here OCT 14 2010 45601-9998

Sent To: SUPREME CT. OHIO / CLERK CT
Street, Apt. No.; or PO Box No.: 65 S. FRONT ST. 8TH FL.
City, State, ZIP+4: COLUMBUS OH 43215

PS Form 3800, August 2006 See Reverse for Instructions

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
CLERK OF
SUPREME COURT OF OHIO
65 S. FRONT ST. 8TH FLOOR
COLUMBUS, OH 43215

X Steve ☐ Agent ☐ Addressee
B. Received by (Printed Name) C. Date of Delivery
RECEIVED OCT 19 2010 CLERK OF COURT SUPREME COURT OHIO
D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7009 0820 0001 3931 6726

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7009 0820 0001 3931 6726

Personal A/C Withdrawal Check Out-Slip

Dollars:	Cents:
7	00

Institution: CCI	Date: 10/12/10
Name: CLERK of SUPREME CT. of OHIO	
Address: 65 S. FRONT ST. 8TH FLOOR	
City: COLUMBUS	State: OH / Zip Code: 43215

☑ Postage ☐ Copies ☐ ID ☐ Misc. _____ ☑ Check-out CK # _____

The inmate's signature on this withdrawal request verifies that the information listed above has been read to or by the inmate and is correct. In the event of an error in the address which results in the return of this package, the inmate shall assume financial responsibility.

Inmate's Signature: Lawson	Number: 547-160	Block & Cell Number: A-1 239 B
Approved By:	Witnessed: LOB	

Ship VIA:	Date Processed: OCT 14 2010

DRC 1004 (Rev. 3/01) DISTRIBUTION: WHITE - Cashier CANARY- Inmate Pink- _____ ACA 4046

EXHIBIT:

A

Attachment not scanned

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

FILED
COURT OF APPEALS
SEP - 3 2010:
PATRICIA M. CLANCY
CLERK OF COURTS
HAMILTON COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

vs.

SYLVESTER LAWSON, II, :

Defendant-Appellant. :

APPEAL NO. C-080877
TRIAL NO. B-0710273

DECISION.

PRESENTED TO THE CLERK
OF COURTS FOR FILING

SEP 03 2010

COURT OF APPEALS

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

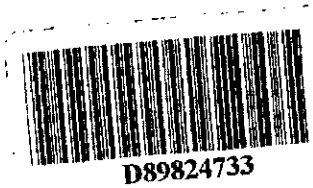
Date of Judgment Entry on Appeal: September 3, 2010

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Scott M. Heenan*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Robertson, Geiser & Longano, LLC, and *Bernadette M. Longano*, for Defendant-Appellant.

FILED
2010 SEP -3 A 8:15
PATRICIA M. CLANCY
CLERK OF COURTS
HAMILTON COUNTY

Please note: This case has been removed from the accelerated calendar.



D89824733

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

STATE OF OHIO,	:	APPEAL NO. C-080877 TRIAL NO. B-0710273
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
SYLVESTER LAWSON, II,	:	
Defendant-Appellant.	:	

ENTERED
SEP - 3 2010

This cause was heard upon the appeal, the record, the briefs, and arguments.

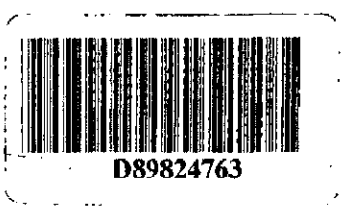
The judgment of the trial court is affirmed for the reasons set forth in the Decision filed this date.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty and orders that costs are taxed under App. R. 24.

The Court further orders that 1) a copy of this Judgment with a copy of the Decision attached constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App. R. 27.

To The Clerk:
Enter upon the Journal of the Court on September 3, 2010 per Order of the Court.

By: _____
Presiding Judge


D89824763

{¶18} To sustain a claim for ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defense.[10]

{¶19} We hold that Lawson's trial counsel was not ineffective. Lawson has failed to demonstrate that his trial counsel's performance was deficient in view of our holdings that Lawson was properly informed of his right to compel witnesses to appear and testify, and that the rape and kidnapping were committed with a separate animus to justify separate sentences. Further, we can find no evidence in the record, nor can Lawson point to any, that demonstrates that his trial counsel failed to investigate the facts or failed to investigate and interview Lawson's witnesses. In fact, Lawson's trial counsel subpoenaed several witnesses on Lawson's behalf.

{¶20} Because Lawson's trial counsel's performance was not deficient, we overrule the fifth assignment of error.

{¶21} Therefore, the judgment of the trial court is affirmed.

Judgment affirmed.

CUNNINGHAM, P.J., HILDEBRANDT and HENDON, JJ.

Please Note:

The court has recorded its own entry on the date of the release of this decision.

[10] *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052; *State v. McCray*, 1st Dist. No. C-080860, 2009-Ohio-4390.

Further, based on our resolution of the first assignment of error, Lawson was not unlawfully sentenced on allied offenses of similar import.

{¶13} Therefore, the second assignment of error is overruled.

{¶14} In Lawson's third and fourth assignments of error, he essentially contends that his guilty pleas were rendered involuntary when the trial court failed to properly inform him of the possible maximum prison term he was facing, as well as failing to inform him of his right to compel and summon witnesses on his behalf. These assignments of error are not well taken.

{¶15} The record demonstrates that the trial court informed Lawson that he was facing a total of 23 years in prison: 10 years for rape, 10 years for kidnapping, and a mandatory three-year prison term for the gun specification. Further, a review of the plea hearing demonstrates that the trial court informed Lawson that he was giving up his right "to confront witnesses against you" and "to have subpoenaed witnesses to testify in your favor." Lawson stated on the record that he understood the rights he was waiving by pleading guilty.

{¶16} Because the trial court complied with Crim.R. 11(C), Lawson cannot demonstrate that his guilty pleas were made involuntarily. Accordingly, the third and fourth assignments of error are overruled.

{¶17} In his final assignment of error, Lawson maintains that his trial counsel was ineffective for (1) failing to perform a rudimentary investigation of facts provided to him by Lawson, (2) failing to investigate and interview promising witnesses, (3) failing to advise Lawson of his constitutional right to compel witnesses to appear and testify, and (4) encouraging Lawson to plead guilty to allied offenses of similar import. This assignment of error is not well taken.

{¶7} We conclude that Lawson's act of sexually attacking the victim while in a moving vehicle subjected her to a substantial increase in the risk of harm she faced. Further, the fact that the victim was forced into a car and driven away from where she had been abducted demonstrated substantial movement of the victim that was not merely incidental to the rape. Accordingly, we hold that there existed a separate animus for each offense sufficient to support separate convictions.

{¶8} We note that in our decision granting Lawson's application to reopen his appeal, we concluded that the rape and kidnapping were allied offenses of similar import because the record could not "be said to demonstrate a spatial or temporal separation between the two offenses or a separate animus as to each." But after closely reexamining the record, we have determined that this initial conclusion was wrong.

{¶9} Accordingly, the first assignment of error is overruled.

{¶10} In his second assignment of error, Lawson contends that his agreed sentence was not "authorized by law" and was thus subject to appellate review under R.C. 2953.08(D)(1). We disagree.

{¶11} The Ohio Supreme Court has held that a sentence is "authorized by law" and is not appealable within the meaning of R.C. 2953.08(D) if it comported with all mandatory sentencing provisions.[9]

{¶12} We hold that Lawson's aggregate sentence of 15 years' incarceration was "authorized by law" because it comported with the appropriate sentencing provisions. Each prison term fell within the appropriate statutory range for the corresponding offense, and Lawson was properly notified of postrelease control.

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[9] *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶20.

{¶5} The Ohio Supreme Court has held that rape and kidnapping were allied offenses of similar import.[6] But the court has established guidelines to determine whether kidnapping and rape were committed with a separate animus so as to permit separate punishments under R.C. 2941.25(B). In *State v. Logan*, the court held that "[w]here the restraint or movement of the victim is merely incidental to a separate underlying crime, there exists no separate animus sufficient to sustain separate convictions; however, where the restraint is prolonged, the confinement is secretive, or the movement is substantial so as to demonstrate a significance independent of the other offense, there exists a separate animus as to each offense sufficient to support separate convictions."[7] Additionally, the *Logan* court recognized that where the asportation or restraint "subjects the victim to a substantial increase in risk of harm separate and apart from * * * the underlying crime, there exists a separate animus."[8]

{¶6} After a thorough review of the record, we hold in this case that the rape and kidnapping offenses were committed with a separate animus. The record demonstrates that Lawson and an accomplice had driven up to the victim late at night while she was retrieving a bag from her aunt's car. Lawson pointed a gun at her and demanded money. After the victim stated that she did not have any money, Lawson forced her into the back seat of the car. Lawson also entered the back seat and ordered the victim to disrobe. At gunpoint, Lawson forced the victim to perform fellatio while Lawson's accomplice drove the car around town. The victim was later abandoned not far from where she had been abducted.

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[6] See *State v. Donald* (1979), 57 Ohio St.2d 73, 74-75, 386 N.E.2d 1341, syllabus; accord *State v. Adams*, 103 Ohio St.3d 508, 2004-Ohio-5845, 817 N.E.2d 29, ¶89-95.
[7] *State v. Logan* (1979), 60 Ohio St.2d 126, 397 N.E.2d 1345, syllabus.
[8] Id.

Per Curiam.

{¶1} In August 2008, following the entry of a guilty plea, defendant-appellant Sylvester Lawson, II, was convicted of rape,[1] kidnapping,[2] and an accompanying gun specification. The trial court imposed an agreed prison term of six years each for the rape and kidnapping and three years for the firearm specification, and it ordered that the sentences be served consecutively for an aggregate prison term of 15 years. Lawson appealed his conviction, and appellate counsel was appointed. Lawson's appellate counsel filed a no-error brief, and this court affirmed Lawson's convictions and sentences.[3] A few months later, Lawson filed an application to reopen his direct appeal under App.R. 26(B), and we granted the application.

{¶2} In the reopened appeal, Lawson brings forth four assignments of error. For the following reasons, we affirm his convictions and sentences.

{¶3} In his first assignment of error, Lawson argues that the trial court erred when it convicted and sentenced him for both rape and kidnapping in violation of R.C. 2941.25, Ohio's multiple-count statute.

{¶4} Under R.C. 2941.25, if a defendant's conduct results in allied offenses of similar import, the defendant may only be convicted of one of the offenses.[4] But if the defendant commits each offense separately or with a separate animus, then convictions may be entered for both offenses.[5]

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[1] R.C. 2907.02(A)(2).
[2] R.C. 2905.01(A)(4).
[3] See *State v. Lawson* (June 17, 2009), 1st Dist. No. C-080877.
[4] R.C. 2941.25(A).
[5] R.C. 2941.25(B).