

**ORIGINAL**

IN THE SUPREME COURT OF OHIO

State ex rel.  
John Joseph Rinaldi  
68518 Bannock Road  
St. Clairsville, OH 43950

Relator,

VS.

Stark County Courthouse  
Court of Common Pleas  
Judge V. Lee Sinclair  
115 Central Plaza, North  
Canton, OH 44702-1414

Respondent.

**11-0888**

Original Action  
in Mandamus

---

COMPLAINT FOR A WRIT OF MANDAMUS

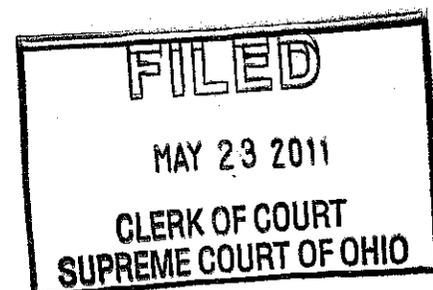
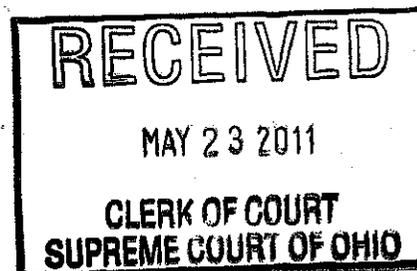
---

John Joseph Rinaldi, ID No. 532-682  
c/o Belmont Correctional Institution  
68518 Bannock Road, SR 331  
Post Office Box No. 540  
St. Clairsville, OH 43950-0540  
Phone: 740-695-5169  
Fax: 740-695-8272

RELATOR, PRO SE

Stark County Prosecutor  
Attorney John D. Ferrero, Jr.  
Stark County Office Building, Suite 510  
110 Central Plaza, South  
Canton, OH 44702  
Phone: 330-451-7897  
Fax: 330-451-7965

COUNSEL FOR RESPONDENT.



MEMORANDUM IN SUPPORT OF WRIT

STATEMENT OF JURISDICTION

¶1. The Supreme Court has original jurisdiction under the following authorities to review a complaint for a writ of mandamus:

OHIO RULES OF PRACTICE: O.R.Sup.Ct.Prac., RULE X, § 1(A).  
OHIO REVISED CODE: O.R.C. §§ 2503.04, 2731.02, et al.  
OHIO RULES OF CIVIL PROCEDURE: O.R.Civ.Proc., RULE 8(A), 82, et al.  
OHIO CONSTITUTION: O.Const., Art. IV, § 2(B)(1)(b).  
UNITED STATES CONSTITUTION: U.S.C.A. 1, 5, 9, 10, 14.

SUMMARY OF CASE

¶2. Pursuant to State vs. Gover (1995), 71 Ohio St.3d 577, at 581, where this Court had previously held in State vs. Catlino (1967), 10 Ohio St.2d 183, that "[a] convicted defendant has a constitutional right to counsel on direct appeal to the Court of Appeals from his judgment of conviction." Id., paragraph one of the syllabus. In which, a denied right to appellate counsel as a result of an error made at the trial level, proper remedy is to file a petition for postconviction relief under R.C. 2953.21. Id., see 71 Ohio St.3d at 580. "The time between the entry of the judgment of conviction and the filing of the postconviction relief petition will not be problematic." Ibid., Gover, supra. However, Relator was especially denied that right even upon after been denied relief to file a delayed appeal in the court of appeals. See, State vs. Rinaldi (Sept. 17, 2010), Stark App. No. 2010-CA-00227, unreported; Reference below of the Stark County Court of Common Pleas case no. 07CR845. No discretionary review was sought to the Ohio Supreme Court because this Court had provided a remedial procedure to procure a delayed appeal, in the absence of invoking App.R. 5(A)(1)(a), of the Ohio Rules of Appellate Procedure (AppR), by way of petition for postconviction relief under the RC Section 2953.21, of the Ohio Revised Code (RC), in accord to this Court's decision in State vs. Gover, supra, 71 Ohio St.3d 577. This Court also had stated that "The court of appeals' denial of pro se motions for a delayed appeal — was independent of the trial court's failure to provide appointed counsel." Id., Gover, at 580.

¶3. Relator Rinaldi seeks to vacate the judgment of the conviction and have the judgment entry refiled anew in accord to Gover.

STATEMENT OF THE CASE AND FACTS

¶4. Relator John Rinaldi ("RELATOR" hereinafter) pled guilty to a felony conviction on August 31, 2007, in the Stark County Court of Common Pleas. After which it was discovered that Relator's criminal defense attorney Jeffrey D. Haupt had died and Relator found that no direct appeal was ever filed to the criminal case in the Fifth Judicial District Court of Appeals for Stark County, Ohio.

¶5. After a series of contacts with the Haupt Law Firm to obtain Relator's (lost) case file his defense attorney possessed was unsuccessful, Relator had filed a pro se delayed appeal with the court of appeals. The appellate court denied Relator access to appeal his conviction and sentence on grounds that Relator had failed to establish good cause for delay in filing a timely appeal. See, supra, Stark App. No. 10CA227.

¶6. Relator filed for postconviction relief pursuant to the RC Section 2953.23, instead of Section 2953.21, in accord to Gover, because of the trial court's divested jurisdiction after 180-days from the date of the entry of judgment if no appeal is taken.

¶7. R.C. § 2953.23, provides (in pertinent part):

"(A) \* \* \* \*

(1) \* \* \* \*

(a) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, \* \* \*

(b) \* \* \* \*

(2) \* \* \* \*

Id.

¶8. Thereof, Relator filed the petition on January 5, 2011, with the criminal case trial court but the common pleas court denied relief in just two-days on January 7, 2011. No appeal of the post-conviction petition denial was had because it would be nonsensical to appeal the trial court's adjudication of Gover claim where the court stated, "The defendant does not state a valid legal position for post conviction relief." Id., Stark County C.P. #07CR845, supra.

Especially, of course, appealing to the same appellate court that just denied the delayed appeal would be absurd.

#### CAUSE OF ACTION TO GRANT WRIT

¶9. In order to be entitled to a writ of mandamus, relator must establish: (1) that relator has a clear legal right to the relief prayed for, (2) that the respondent is under a clear legal duty to perform the requested act, and (3) that relator does not have a plain and adequate remedy in the ordinary course of law. See, e.g., State ex rel. Harris vs. Rhodes (1978), 54 Ohio St.2d 41.

¶10. To which Relator bases his claim for relief from this Court's decision in State vs. Gover, supra, 71 Ohio St.3d 577, where a criminal defendant may petition the trial court to "re-enter the judgment of conviction against the Defendant with the result of reinstating the time within which the Defendant may timely file a notice of appeal pursuant to App.R. 4(A)." Id., at 581.

¶11. However, Relator's attempt to procure the delayed direct appeal from the judgment of his conviction entered on August 31, 2007, had failed. For which, Relator has a clear legal right to be afforded a direct appeal from his felony conviction, in accord to Gover, [71 O.St.3d 577], when respondent is under a clear legal duty to perform the requested act of permitting a criminal defendant the right to appeal his felony conviction, in which it has been proven that Relator does not have a plain and adequate remedy at law to pursue an appeal by the denials entered below, therefor. And because the demonstration is clear that the trial court of the common pleas and the court of appeals refused the appeal shows that neither procedures in the course of law were an adequate remedy where both courts denied relief therefrom.

¶12. Many supportive case provide a legal right to relief for a criminal defendant to take an appeal. See, Griffin vs. Illinois, 351 U.S. 12 (1956). The state may not "bolt the door to equal justice" to indigent defendants. Id., 351 U.S. at 24 (FRANKFURTER, J., concurring in judgment). And according to Peguero vs. United States, 526 U.S. 23 (1999), that due process is offended when a defendant who plead guilty is kept completely ignorant of his appellate rights Id., at 27. "Trial court's failure to advise the

defendant of his right to appeal sentence was error." *Id.* And see, Douglas vs. California, 372 U.S. 353 (1963). Indigent defendants had a right to counsel on their first appeal. And all defendants have the right to effective assistance of appellate counsel. See also, Eyitts vs. Lucey, 469 U.S. 387, 393 (1985).

¶13. The court of appeals in denying Relator's delayed appeal had stated that the ignorance of law was not such circumstances to automatically establish good cause for the failure to seek a timely appeal. But for, the United States Sixth Circuit Court of Appeals had rendered that the Constitution is violated if a convicted defendant is not given the right to appeal "by reason of his lack of knowledge of his right and the failure of his counsel or the court to advise him of his right to appeal with the aid of counsel." See, Jacobs vs. Mohr (6th Cir.2001), 265 F.3d 407, 419, citing Goodwin vs. Cardwell (6th Cir.1970), 432 F.2d 521, 522-23. See also, Wolfe vs. Randle (U.S.S.D. (Ohio) 2003), 267 F.Supp.2d 743, 747 (citing same). (No further history)

¶14. Notwithstanding the facts of Crim.R. 32(A)(1), et seq., that requires the trial court to advise the defendant, after sentencing, that he has the right to appeal ..., and Crim.R. 32(B), requires the court to provide "Notification of right to appeal." *Id.*, Ohio Rules of Criminal Procedure (CrimR). See also under Crim.R. 32, Staff Notes 1998.

¶15. And furthermore, "An appointed counsel's failure to file a timely notice of appeal as required by Ohio's appellate rules of procedure constitutes ineffective assistance of counsel." See, Roe vs. Flores-Oriega, 528 U.S. 470, 478-481 (2000). Also, criminal defendants "whose rights to appeal has been frustrated should be treated exactly like any other appellants; they should not be given an additional hurdle to clear just because their rights were violated at some earlier stage in the proceedings." See, Rodriguez vs. United States, 395 U.S. 327, 330 (1969).

¶16. "The defendant should not be penalized for failing to appeal in the the first instance when his failure to appeal is attributable to the errors of a District Court Judge." See, Peguero vs. U.S., *supra*, 526 U.S. at 27. However, "[W]hen counsel fails to

file a requested appeal, a defendant is entitled to resentencing and to an appeal without showing that his appeal would likely have merit." Ibid.

¶17. But for, in the instant sub judice situation, this Court had stated in Gover, 71 O.St.3d at 581, "The appropriate avenue of relief in this case is for the trial court to reenter the judgment against the defendant, with the result of reinstating the time within which the defendant may timely file a notice of appeal pursuant to App.R. 4(A)." Id., citing State vs. Miller (1988), 44 Ohio App.3d 42.

#### CONCLUSION FOR RELIEF

¶18. Therefore, in accord to this Supreme Court in State vs. Gover, 71 Ohio St.3d 577, citing the decision held in State vs. Miller (Ohio App. 6 Dist., Wood Cty. 1988), 44 Ohio App.3d 42, id. at 43, "We agree that it would be proper to order the trial court to vacate appellant's sentence and enter a new judgment thereby allowing for a direct appeal to be taken from the new judgment." (citations omitted) But see, Evitts vs. Lucey, 469 U.S. 387 (1985). Id., at 399 n.10, citing Rodriguez vs United States, 395 U.S. 327, 332 (ordering similar remedy for denial of appeal in federal prosecution). Thus, the Rodriguez Court held that the courts below erred in rejecting petitioner's application for relief because of his failure to specify the points he would raise were his right to appeal reinstated. Id., at 330.

¶19. For in which similar circumstances exist where Relator had been denied the constitutional right to a delayed appeal, and the subsequent attempt for relief so to file a direct appeal by petitioning the trial court pursuant to this Court's Gover. In which the trial court denied Relator's postconviction petition on mere grounds that "defendant does not state a valid legal position for post conviction relief." Id.

¶20. Hereby as demonstrated in the foregoing citations, Relator request relief in order to receive the due process right of law to a timely filed appeal as of right. Relator respectfully urges this Supreme Court of Ohio to require the judgment entry filed

by the Stark County Court of Common Pleas case no. 2007CR0845, on August 31, 2007, be vacated, and then refiled to reenter a new file time stamp date of entry so to be able to file a timely notice of appeal pursuant to App.R. 4(A), within 30-days thereof.

¶21. Or in an alternative, issue the writ of mandamus to re-sentence Relator in accord to Crim.R. 32, inter alia, so to re-instate the judgment entry anew. And order the trial court to appoint Relator an appellate counsel on appeal. Or grant Relator other relief deemed appropriate to provide an appeal as of right in the court of appeals.

Respectfully submitted by,

Dated: 5/12/11

John Joseph Rinaldi, #532-682  
RELATOR, PRO SE

SERVICE OF COPY, in accord to RULE X, in original actions under Section 4(A), of the Rules of Practice of the Supreme Court of Ohio, that the Clerk of the Supreme Court shall issue a summons and serve the summons and a copy of the complaint by certified mail sent to the address of the respondent as indicated on the cover page of the complaint. To which, the complaint must be served to the respondent's counsel as provided by address on the cover page of the complaint. In the instant case, the respondent is a common pleas court judge whom is represented by the county prosecutor's office, unless otherwise stated differently.

Wherefore, service is not required by the relator but for in a previous similar case (2011-0190), the Clerk's deviation to mail the summons to the wrong party caused that case to be dismissed for the failure of respondent to file an answer at all.

Therefore, copies were personally sent to the Stark County Prosecutor John D. Ferrero Jr. as named counsel for respondent, which was executed on this 12 day of May, 2011.

John Joseph Rinaldi, #532-682  
Belmont Correctional Institution  
68518 Bannock Road, P.O. Box 540  
St. Clairsville, OH 43950-0540  
RELATOR, PRO SE.

STATE OF OHIO  
COUNTY OF BELMONT

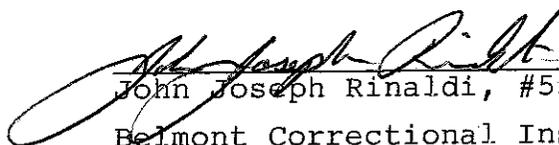
)  
) Ss  
)

AFFIDAVIT OF THE RELATOR  
SPECIFYING DETAILS OF CLAIM

I, pro se JOHN JOSEPH RINALDI, the undersigned Affiant,  
hereby attest to the facts and depose that these statements are  
correct and true to the best of my knowledge and belief.

- 1). I am a prisoner at Belmont Correctional Institution;
- 2). I have limited access to reference or evidence;
- 3). I am without legal advise to assist in preparation;
- 4). I aver to the facts set forth in the foregoing Writ;
- 5). I state that my right to an appeal has been denied;
- 6). I have no other known course of law to pursue;
- 7). I cannot exhaust state remedies without an appeal;
- 8). I strongly feel that an appeal would sustain merit;

FURTHER, Affiant sayeth naught.



John Joseph Rinaldi, #532-682

Belmont Correctional Institution

68518 Bannock Road

Post Office Box 540

St. Clairsville, OH 43950-0540

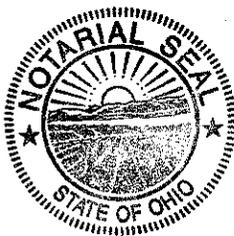
RELATOR, PRO SE.

SWORN TO AND BEFORE IN MY PRESENCE,

on this 12<sup>th</sup> day of May, 2011.

S E A L

  
NOTARY PUBLIC



SHANE M. KILDOW  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
June 6, 2016