ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 11-1320
Plaintiff-Appellee,	:	On Appeal from the Hamilton County Court of Appeals first Appellate District
vs.	:	
Robert Pearie,	:	C.A. Case No. C-110367
Defendant-Appellant.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT Robert Pearie

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COUNSEL FOR APPELLEE, STATE OF OHIO

FILED
AUG 02 2011
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SUPREME COURT OF OHIO

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SUPREME COURT OF OHIO

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

This case presents a fundamental constitutional Question that should be answered in the affirmative, that every convicted criminal in the state of Ohio should be entitled to. Does a criminal defendant whom has been convicted of a crime in the State of Ohio have a right to appeal his/or her, case? If so, if a appellate court overrule a ~~tim~~ untimely request of a defendant, whom has availed him or her self to App. R. 5, demonstrating why the request was delayed, is that error? If so, Defendant prays that this Court will accept jurisdiction of this case and reverse the erroneous decision of the first District Court of appeals denying his request, and order to afford Mr. Peavie his right to appeal.

It is so prayed

Respectfully submitted,

STATEMENT OF THE CASE AND THE FACTS

A Hamilton County Grand Jury returned a three count indictment on 11th day, of November, 2010.

Defendant went to trial on 5th day April, 2011. Defendant plead guilty to counts one and three of the indictment. Defendant received 10 years on count one, and 5 years on count 3. Defendant asked his counsel to file an appeal on his behalf, but after Defendant arrived at Madison Correctional Institution he learned that counsel failed to file a timely appeal. Defendant sought out how to appeal his case after the time limit had passed, and did file a delayed appeal pursuant to App.R. 5(A) in the first District Court of Appeal. That Court denied his request and this appeal follows.

MEMORANDUM

Because Ohio has opted to act in a field where its action has significant discretionary elements, it must act in accord with the dictates of the Constitution.

The right to appeal a state criminal conviction is not specifically provided for in the Federal Constitution. Estelle v. Dorrough (1975), 420 U.S. 534, 536. However, where a state provides a process of appellate review, the procedures used must comply with the constitutional dictates of due process and equal protection. Griffin v. Illinois (1956), 351 U.S. 12, 18. When a state opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause. Evitts v. Lucey (1985), 469 U.S. 387, 393.

While Griffin held that due process does not require a state to afford appellate review, the Court noted that "all of the States now provide some method of appeal from criminal convictions, recognizing the importance of appellate review to correct adjudication of guilt or innocence." Griffin, 351 U.S. at 18. Subsequent Supreme Court decisions have reinforced the importance of appellate review in legitimizing state trial court convictions. See Ohio Adult Parole Authority v. Woodard (1998), 523 U.S. 272, 278; Halbert v. Michigan (2005), 545 U.S. 605.

In Ohio there is both a statutory and constitutional right to appeal a criminal conviction. See R.C. 2953.02; Ohio Constitution § 3, Art. 4. An appeal as of right is also provided by rule. See App.R. 4(A). Because an appeal is an integral part of Ohio's system for adjudicating guilt or innocence, its procedures

for review must not violate a defendant's federal due process rights. See Evitts, 469 U.S. at 393.

Defendant-Appellant appeals the case number named above. The time to file a timely appeal has expired. However, Ohio has established a system of delayed appeals by leave of court. App.R. 5 governs delayed appeals. The rule states in part:

> (A) Motion by defendant for delayed appeal.
>
> (1) After the expiration of the thirty day period provided by App.R. 4(A) for the filing of a notice of appeal as of right, an appeal may be taken by a defendant with leave of the court to which the appeal is taken in the following classes of cases.
>
> (a) Criminal Proceedings;
>
> * * *
>
> (2) A motion for leave to appeal shall be filed with the court of appeals and shall set forth the reasons for the failure of the appellant to perfect an appeal as of right. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of the appeal in the form prescribed by App.R. 3 and shall file a copy of the notice of the appeal in the court of appeals. The movant also shall furnish an additional copy of the notice of appeal and a copy of the motion for leave to appeal to the clerk of the court of appeals who shall serve the notice of appeal and the motions upon the prosecuting attorney.

App.R. 5(A) allows a criminal defendant to file a motion for leave to appeal after the expiration of the 30-day period provided by App.R 4(A). The motion must set forth the reasons for the failure of the defendant to perfect an appeal as of right. The defendant has the burden of "demonstrating a reasonable explanation of the basis for failure to perfect a timely appeal." State v. Padgitt (Nov. 2, 1999), Franklin App. No. 99AP-1085 (Memorandum Decision), quoting

State v. Cromlish (Sept. 1, 1994), Franklin App. No. 94APA06-855. A proper motion for leave must address two specific issues. First, the defendant must give a legitimate explanation in regard to why he failed to file his notice of appeal in a timely manner under App.R. 4(A). Second, he must provide a legitimate explanation as to why he did not submit his motion for leave within a reasonable time after the end of the thirty-day period for bringing a timely appeal. See State v. Binion (Dec. 13, 2002), 11th Dist. No. 2002-T-0093. The decision to grant or deny a motion for leave to appeal pursuant to App.R. 5(A) rests within the sound discretion of the court of appeals. State v. Fisher (1988), 35 Ohio St.3d 22, 26, 517 N.E.2d 911.

Why Defendant-Appellant Did Not File a Timely Appeal

Told trial Counsel to file a timely Appeal on my ~~Def~~ RD behalf, but counsel failed to do so, Therefore fault lies with Counsel.

Defendant-Appellant also attaches an affidavit in support.

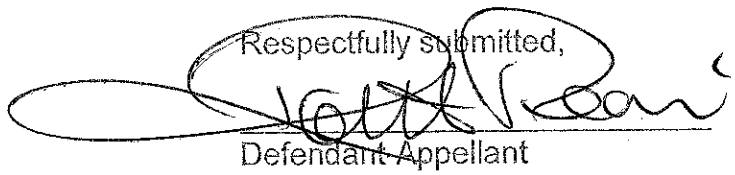
Conclusion

"There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." Griffin v. Illinois (1956), 351 U.S. 12, 24 (Frankfurter, J., concurring in judgment). Defendant-Appellant has demonstrated

his desire to timely appeal his conviction. He submits this motion for leave within a reasonable time after the end of the 30-day period for bringing a timely appeal.

For these reasons, he respectfully requests this Court to grant him a delayed appeal.

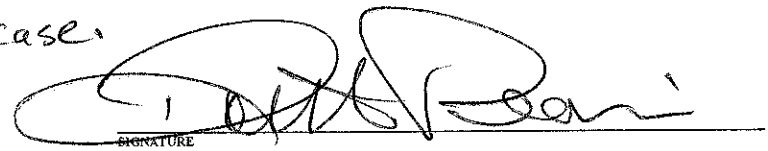
Respectfully submitted,



Defendant-Appellant

CONCLUSION

Therefore I humbly asks that this Court with accept Jurisdiction of this case.



SIGNATURE

Robert Ravie 648575

NAME AND NUMBER

Madison Correctional Institution

INSTITUTION

P.O. Box 740

ADDRESS

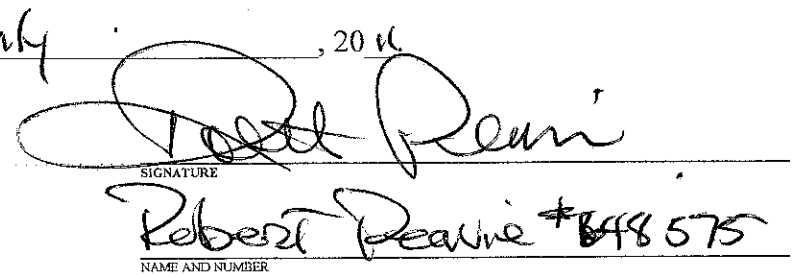
London, Ohio 43140

CITY, STATE & ZIP

DEFENDANT-APPELLANT, **PRO SE**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction was forwarded by regular U.S. Mail to Joe Deters, Prosecuting Attorney, Hamilton County, 230 East Ninth St, Cincinnati, Ohio 45202, this 18th day of July, 20 11.



SIGNATURE

Robert Pearlie #648575

NAME AND NUMBER

DEFENDANT-APPELLANT, **PRO SE**

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
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Plaintiff-Appellee,	:	
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	:	First Appellate District
Robert Reavie,	:	
	:	C.A. Case No. C-110367
Defendant-Appellant.	:	

APPENDIX TO

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT Robert Reavie

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

STATE OF OHIO,

Appellee,

vs.

ROBERT PEARIE,

Appellant.

APPEAL NO. C-110367
TRIAL NO. B-1007503

ENTRY OF DISMISSAL

This cause came on to be considered upon the appeal from the trial court.

The Court *sua sponte* dismisses the appeal for failure of the appellant to comply with the Ohio Rules of Appellate Procedure to wit: the notice of appeal was not timely filed [see App. Rule 4 (A)], and there was an agreed sentence [see R.C. 2953.08 (D)].

All pending motions are overruled as moot.

It is further ordered that a certified copy of this judgment shall constitute the mandate to the trial court pursuant to Rule 27, Ohio Rules of Appellate Procedure.

To The Clerk:

Enter upon the Journal of the Court on JUL - 7 2011 **per order of the Court.**

By: Patrick Dinkelacker

Presiding Judge

(Copy sent to counsel)