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SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,
Plaintiff-Appellee,

-vs-

CASE NO. 2011-0827

DESMOND A. BILLINGSLEY,
Defendant-Appellant.

MOTION OF DESMOND BILLINGSLEY FOR RECONSIDERATION;
REINSTATEMENT OF APPEAL; AND REQUEST FOR LEAVE TO FILE
MERIT BRIEF BEYOND RULE
[S.Ct. Prac. R. 11.2]

Now comes Defendant-Appellant, by and through his counsel, and hereby moves this court for reconsideration of its ruling and order journalized November 21, 2011, dismissing Defendant-Appellant's appeal for want of prosecution; for re-instatement of the within appeal; and for leave to file Defendant-Appellant's merit brief beyond rule.

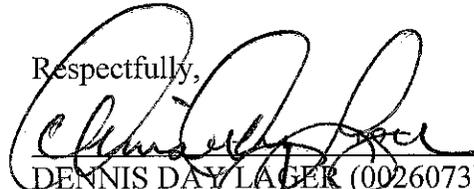
In support of this motion, all as more fully and particularly set forth in the following and supporting memorandum, Defendant-Appellant states that his failure to file his merit brief timely within rule pursuant to S.Ct. Prac. R. 6.2 (A)(2), was the result of his counsel's error in calculating time for filing, and not for any reason relating to lack of diligence or work ethic relating to merit brief preparation; and that relief should be favorably considered given that the within case appears to be a case of first impression and a matter of great public and general interest which should be decided on the merits and not by procedural default occasioned by the oversight and negligence of Defendant-Appellant's counsel which bears adversely upon Defendant-Appellant. Moreover, Defendant-Appellant states that the State of Ohio, by and through the express statement

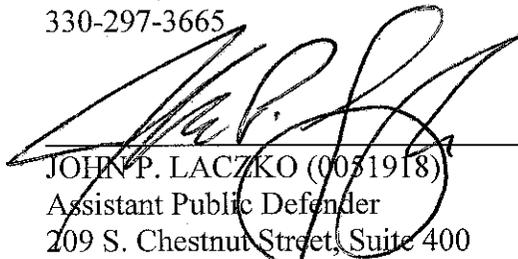
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and consent of Victor V. Vigluicci, Portage County Prosecuting Attorney, agrees that relief should be granted so that this matter may be resolved on the merits and not by procedural default.

Wherefore, Defendant-Appellant respectfully requests that this court reconsider its order of dismissal; reinstate the within appeal; and grant Defendant-Appellant leave to file his merit brief beyond rule.

Respectfully,


DENNIS DAY LAGER (0026073)
Portage County Public Defender
209 S. Chestnut Street, Suite 400
Ravenna, Ohio 44266
330-297-3665


JOHN P. LACZKO (0051918)
Assistant Public Defender
209 S. Chestnut Street, Suite 400
Ravenna, Ohio 44266

Attorneys for Defendant-Appellant

MEMORANDUM IN SUPPORT

Statement of Facts

On March 26, 2010, Defendant-Appellant, following conviction through pleas of No Contest in the Portage County Court of Common Pleas to three counts of Aggravated Robbery, R.C. § 2911.01 (A)(1), with attendant counts of firearm specifications pursuant to R.C. § 2941.145, was sentenced to thirty-three years in prison, concurrent to eight years prison for similar offenses in Summit County, Ohio, as ordered by the Summit County Court of Common Pleas on November 17, 2008.

Defendant-Appellant thereafter timely appealed his Portage County convictions and sentence to the Eleventh District Court of Appeals on April 14, 2010, raising the singular issue of whether the trial court committed an error of law and abused its discretion by failing and refusing to enforce a Crim. R. 11 plea agreement between the State of Ohio and Defendant-Appellant, negotiated by the Summit County Prosecuting Attorney, on behalf of the State of Ohio, and Defendant-Appellant's Summit County counsel, that, in return for Defendant-Appellant's truthful information resolving crimes in other county jurisdictions, Defendant-Appellant would not be charged or prosecuted for crimes committed in those other jurisdictions.

On March 31, 2011, the Eleventh District Court of Appeals affirmed the decision of the Portage County Court of Common Pleas. Thereafter, Defendant-Appellant, through his trial and appellate counsel, the Portage County Public Defender, filed a timely appeal and memorandum in support of jurisdiction to the Supreme Court of Ohio on May 16, 2011. On September 21, 2011, this court accepted jurisdiction of Defendant-Appellant's discretionary appeal as a matter of great public and general interest and allowed briefing pursuant to rule from a record filed with the court on October 5, 2011.

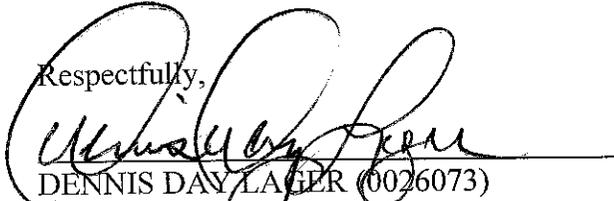
Upon receipt of notice from the Supreme Court of the filing of the record on October 5, 2011, counsel for Defendant-Appellant erringly calculated time for filing the merit brief by mistakenly referencing time periods under S.Ct. Prac. R. 2.2 (A)(1)(a) instead of S. Ct. Prac. R. 6.2 (A)(2). By using a 45 day period for filing of the merit brief instead of the 40 days allowed under S. Ct. Prac. R. 6.2 (A)(2), counsel for Defendant-Appellant erringly calculated November 19, 2011, as a timely filing period. On Thursday, November 17, 2011, counsel for Defendant-Appellant became aware of the

calculation error; contacted the Clerk of the Supreme Court to request guidance; and then mailed the merit brief on Friday, November 18, 2011, for overnight delivery to the court for the purpose of demonstrating that the brief had been prepared within the time as errantly calculated, knowledgeable that under rule the filing would be denied. On Monday, November 21, 2011, this court journalized a judgment entry dismissing Defendant-Appellant's appeal for want of prosecution. In preparation of drafting the within motion for reconsideration, Defendant-Appellant's counsel contacted the Portage County Prosecuting Attorney, Victor V. Viglucci, to explain the time calculation error and this court's dismissal of Defendant-Appellant's appeal for want of prosecution. Prosecutor Viglucci expressed his preference to have the within matter decided on the merits and not by procedural default and granted counsel permission to restate his position within the body of this motion for this court's reconsideration of its decision to dismiss.

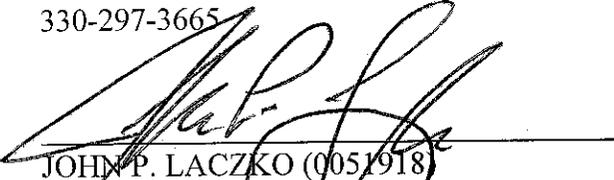
Prayer for Relief

Defendant-Appellant, through counsel, prays this court for relief from its order of dismissal of the within appeal, and asks that his appeal be re-instated and that he be allowed to file his merit brief beyond rule. Defendant-Appellant notes that the errant time calculation for filing his merit brief was not his fault, but that he is the one adversely impacted by his counsel's error. Moreover, Defendant-Appellant asserts and presents a genuine litigation issue in his appeal which this court has determined to be a matter of great public and general interest, resolution of which would be helpful and instructive in managing and administering Ohio's criminal trial practice relative to Criminal 11 plea agreements between the State of Ohio and criminal defendants.

Respectfully,



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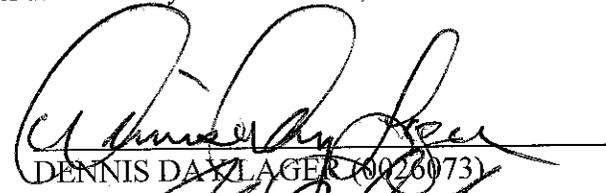


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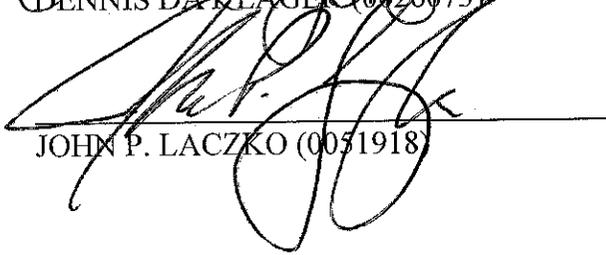
Attorneys for Defendant-Appellant

CERTIFICATE OF SERVICE

I/We hereby certify that the foregoing motion for reconsideration was served upon the Portage County Prosecuting Attorney, counsel for the State of Ohio, by delivering a copy to his courthouse mailbox this 29th day of November, 2011.



DENNIS DAY LAGER (0026073)



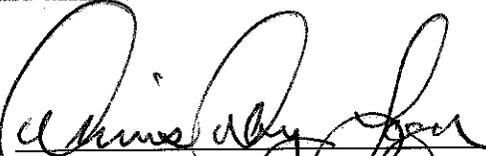
JOHN P. LACZKO (0051918)

AFFIDAVIT

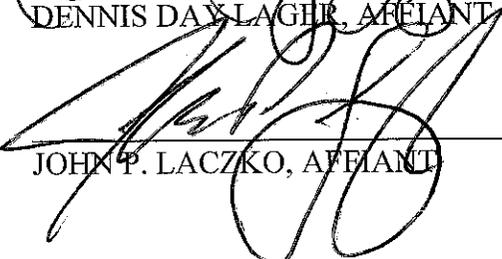
STATE OF OHIO,
COUNTY OF PORTAGE, SS:

I/We, Dennis Day Lager, Portage County Public Defender, and John P. Laczko, Assistant Public Defender, being duly cautioned and sworn absolutely, hereby depose and state the following:

That the facts set forth in the attached Motion of Desmond Billingsley for Reconsideration; Reinstatement of Appeal; and Request for Leave to File Merit Brief Beyond Rule, are true as we verily believe and affirm.

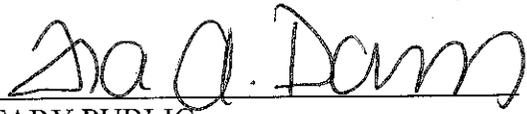


DENNIS DAY LAGER, AFFIANT



JOHN P. LACZKO, AFFIANT

Sworn to before me and subscribed in my presence this 29th day of November,
2011.



NOTARY PUBLIC



Tia A. Davis
Notary Public, State of Ohio
My Commission Expires
November 13, 2016