

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff,

vs.

Todd E . Peace

Defendant,

CASE NO

12-0705

On Appeal from the Hancock County
Court of Appeals, Third Appellate
District.

Court of Appeals OS-12-14

Trial Court # 97-29-C.R.

**Memorandum in Support
OF Jurisdiction OF Appellant**

Plaintiff -State of Ohio

Mr. Mark C. Miller

Prosecuting Attorney

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Defendant- Pro Se

Mr. Todd E. Peace # 371-943

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STATEMENT OF THE CASE AND FACTS

In February 1997, The Hancock County Grand Jury returned a four count indictment. Including two separate death specifications. On February 13, 1998, Appellant Peace was Arraigned on a four (4) count indictment returned by the Hancock County Grand Jury, February 1997 Term.

On September 28, 1998 the Appellate entered a guilty plea to three counts as follows: Aggravated Murder R.C. 2903.01 (A) with no specs (unclassified felony) maximum penalty of life parole after twenty (20)years ,Aggravated Arson R.C. 2909.02 a F-1 maximum penalty of ten (10) years, Tampering with Evidence R.C. 2921.12 (A) (1) an F-3 maximum penalty of five (5) years. Peace's aggregate total sentence was 33 to life with 13 of those years as mandatory sentence.

Peace was committed to ODRC on February 12, 1998. While Peace believes he was not informed of his rights to appeal at the sentencing and to the opposite Peace believed he has no right to appeal, appointed counsel provided (being indigent) or surely his counsel would have done so, advised him so, or taken steps to have his sentence reviewed . Peace was and is unable to verify this fact as he has never received the plea and sentencing transcripts despite numerous motions or letters to the court.

commencing in 2000 as documented in the record (Peace now understands the difference between the record, transcripts and such), not being familiar with the law and did not even understand what a transcript is or was , thinking the transcript was the transcript of the docket. Peace filed motions to withdraw his plea from 2000-2002, a Post-Conviction Relief in 2004, {January 23,2004}.

Later , after many reinterpretations of law beginning in June 24, 2004 Blake v. Washington S. ct.

Reporter 124 B 2531 (2004) continuing to present day of this Appellant filed seven (7) separate and

interdependent motions for re-sentencing , set aside sentencing ,and void sentencing, and post conviction relief petition R.C. 2953.23. In March 11, 2010 Peace filed motions to withdraw his guilty plea. On April 7, 2011 filed motions to void his sentence and , withdraw the plea agreement , In June 9, 2011 The Hancock County Trial Court filed their decisions, Orders and Judgment Entry for Various Post-Conviction Motions filed. On November 21, 2011, The Third District Court of Appeals{Sustaining the Fifth (5) Assignment of Error} entered an adverse judgment against Peace. (This is now being Appealed to the Third District) , Peace Filed Memorandum in Support of Jurisdiction which was filed In The Ohio Supreme Court On January 26, 2012. Peace now Appeals from The Third District Court of Appeals ruling On March 30 ,2012 after being denied Leave to File a Delayed Appeal. Peace now Appeals to the Ohio Supreme Court for Relief.

Memorandum in Support of Jurisdiction of Appellant Mr. Todd E. Peace

Explanation of why this is a case of public or great general interest and involves a Substantial Constitutional Question.

This case presents numerous critical questions of Constitutional and State law in dealing with a Appellant who files “ Leave to File a Delayed Appeal “ and is denied with no response from The State in opposition, only the Appellant Courts Lightning Quick Denial The Motion which was filed on March 21, 2012 and Denied on March 30,2012.{ Scant Nine (9) days later}. Should this Court find these Questions Answered positively then it will change the way Ohio Appellate Courts must review a Delayed Appeal and the Application for a denial or granting of a Delayed Appeal .

- 1) Does The present dictates of what qualifies as sufficient explanation for granting a Leave to File a Delayed Appeal Violate the Ohio Constitution Fourteenth (14TH) Amendments and U.S. Constitutional sixth (6TH)Amendments

COLLEEN MARY O'TOOLE, J., dissents with a Dissenting Opinion.

[P12] I respectfully dissent from the majority.

[P13] Appellant, a pro se litigant, has a constitutional right to appeal his conviction. *State v. Clark* (May 24, 1991), 11th Dist. No. 90-P-2211, 1991 Ohio App. LEXIS 2371, at 9-10. In cases wherein someone is found guilty and sentenced in a criminal matter and there is no prejudice to the state in the delay, a motion for delayed appeal should be granted. The state of Ohio and its taxpayers will be spending their hard earned tax dollars to feed, clothe, house, as well as provide medical care for appellant. I humbly suggest that we should accept the delayed appeal, and review the record before this court [**5] to make sure the trial court did not err. There is no specific time limit for appellant to assert his constitutional right to appeal. In fact, the rule provides specifically for a delayed appeal if the thirty-day deadline to file its original appeal is missed and it specifically does not set a deadline for this delayed appeal to be filed.

[P14] In this case, appellant has filed a request for a delayed appeal, but the majority does not feel inclined to accept it because they believe the reasons he submitted as the cause for the delay do not justify waiting to initiate a direct appeal. The majority, in emphasizing form over function, is placing an unnecessary barrier in front of appellant by its technical reading of the rule. The denial of the constitutional right to appeal is, in itself, sufficient to sustain the request in this instance.

[P15] As appellate judges, we are bound by our oaths to uphold the Constitution and laws of this state. However, mechanical enforcement of a single appellate rule should not take precedence over enforcement of the law as a whole. The Rules of Appellate Procedure are meant to provide a framework for the orderly disposition of appeals. *In re Beck*, 7th Dist. No. [6]00 BA 52, 2002 Ohio 3460, at P29. However, "[o]nly a flagrant, substantial disregard for the court rules can justify a dismissal on procedural grounds." *Id.* at P28, quoting *DeHart v. Aetna Life Ins. Co.* (1982), 69 Ohio St.2d 189, 193, 431 N.E.2d 644. The Supreme Court of Ohio has, again and again, instructed the lower courts of this state that cases are to be decided on the merits, and that the various rules of court are to be applied so as to achieve substantial justice. *Cf. State ex rel. Lapp Roofing & Sheet Metal Co., Inc. v. Indus. Comm.*, 117 Ohio St.3d 179, 2008 Ohio 850, at P12, 882 N.E.2d 911; *DeHart* at 192. Consequently, strict adherence to the appellate rules must yield when a procedural error is inadvertent, and a party or counsel acted in good faith. *Cf. Beck* at P29.

[P16] The Staff Note to the 1994 Amendment to App. R. 5(A) also indicates that the rule is to be given a flexible, liberal interpretation, and not used to dismiss appeals willy-nilly. Prior to the amendment, defendants were required to set forth the errors claimed and evidence relating to the claimed errors. *Id.* The amendment merely retained the requirement that the would-be appellant set forth his or her reasons for the delay. *Id.* In explanation, [7] the Staff Note provides:

[P17] "Although there was also concern about the fairness of requiring usually indigent, and frequently unrepresented, criminal defendants to demonstrate (often without the benefit of a transcript) the probability of error, the primary reason for this amendment is judicial economy. Denial of leave to file a delayed appeal for failure to demonstrate the probability of error usually leads to subsequent litigation of the issue by direct appeals to the Ohio and United States Supreme Courts, petitions to vacate sentence under R.C. 2953.21 et seq., and appeals thereon, and/or federal habeas corpus petitions and appeals. Review of the merits by the courts of appeals upon the initial (albeit delayed) appeal would thus avoid the presentation of the probability of error issue to as many as nine subsequent tribunals."

[P18] In denying this delayed appeal, the majority also ignores the intent of our General Assembly. The

framework for sentencing in criminal matters - despite the changes wrought by *State v. Foster*, 109 Ohio St.3d 1, 2006 Ohio 856, 845 N.E.2d 470 - is still provided by Senate Bill 2. A principal purpose of the General Assembly in reforming Ohio's sentencing structure in Senate [8]Bill 2, including procedure relating to appeals, was cost containment. *State v. Grider*, 8th Dist. No. 82072, 2003 Ohio 3378, at P29, citing Griffin and Katz, *Sentencing Consistency: Basic Principles Instead of Numerical Grid: The Ohio Plan* (2002), 53 Case W.R.L. Rev. 1. R.C. 2929.11(A) mandates that "[t]he overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender." R.C. 2929.12(A) grants trial courts broad discretion in fashioning sentences that fulfill these overriding purposes of felony sentencing, and mandates that our trial courts consider the listed seriousness and recidivism factors when doing so. As appellant pleaded guilty to the crimes for which he was sentenced, the errors he might raise on appeal are limited. Surely it would be most cost effective for this court to consider any such alleged error, and so bring this matter to a quick, final close.

[P19]In sum, the majority, hypnotized by App. R. 5(A), ignores the mandate of the Supreme Court of Ohio that court rules be construed so cases are decided on the merits. It ignores the intent of the General Assembly that the courts deal with criminal cases [9]in the most cost effective manner complying with justice. I humbly suggest this is not a proper application of the appellate rules.

[P20]This court has an affirmative, constitutional and statutory duty to review the trial court for error. We are the constitutional quality control, and backstop for the citizens of the state of Ohio. By skirting this appeal, as well as others, I humbly submit we are not performing our duties to the best of our statutory and constitutional obligation.

[P21]This writer further notes that nothing precludes appellant from refileing his delayed appeal pursuant to App.R. 5(A) and clearing the ministerial obstacle put in place by the majority.

[P22] Thus, I respectfully dissent. State v Ponzi Infra

2) Is it Abuse of Discretion when denied Leave to File a Delayed Appeal when the two prong test , This Supreme Court implemented of legitimate explanation in regards to why Appellant failed to file his notice of Appeal in a timely manner under App. Rule 4 (A) and provides 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 is met with evidence of a "colorable claim" [Prima Facie] going to the heart of the prosecution conviction ?

As the Court unanimously held in Haines v. Kerner 404 U.S. 519,92 S. ct 594, 30 L. Ed 2d 652 (1972). A pro se Complaint , However in artfully pleaded, "must be held to less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appear beyond doubt that the plaintiff {or Defendant} [Emphasis Added] can prove no set of facts in support of his claim which entitle him to relief." Id. At 520-521,92 S.ct at 596, quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct 99 Led 2d 80 (1957).

3) Does the Appellant show sufficient evidence after showing the denial of fundamental Appellate

Rights protected by the U.S. Constitution and Ohio Constitutional Amendments of the U.S. Fifth, Sixth, and Ohio Fourteenth Amendment ? Peace filed a Delayed Appeal in 2002 and November 2010, There is no rules against re-filing a motion for leave to file a Delayed Appeal Peace could find no such Justification in citing to a previous filing(s) as a legitimate reason for a denial. Peace provided evidence Approx. Three-Hundred (300) pages.

The Third District Court of Appeals Err in the Denial Of Due Process and Equal Protection of

Law: 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. How-ever , where a state provides a process of appellate review , the procedures used must comply with the Constitution dictates of due process and equal protection . Griffin v Illinois (1956), 351 U.S. 12,18. 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 supra.

In State v Wilson (1979) 58, Ohio St 2d 52,388 N.E. 2D 745, (appeal dismissed) , (1979) 444 U.S. 804 100 S. ct 25 held “ Those Constitutional violations which go to the ability of the state to prosecute , regardless of factual guilt may be raised on appeal from a guilty plea” . “A guilty plea does not waive all appeal rights. State v Clark (May 24 1991) 11District no. 90-P-2211, Ohio App Lexis 2371 at 9-10 “Appellant , a pro se litigant, has a Constitutional right to appeal his conviction.” State v Ponzi (September 30, 2010) 11 District 2010 Ohio 4698, 2010 Ohio App LEXIS 3997. “ There is no specific time limit for appellant to assert his Constitutional rights to appeal . In fact, the rules provided specifically does not set a deadline for this delayed appeal to be filed. More-over , the denial of constitutional rights to appeal is ,in itself, sufficient to sustain the request in this instance . Ponzi Supra App Rule 5 (a) (1) provides , in relevant part : After expiration of the thirty day period by App Rule 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 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. In Ohio there is both a statutory and constitutional right to appeal a criminal conviction See OR.C. 2953.02. Ohio Constitution

§ Article 4, An appeal as of right is provided, See App Rule 4 (A). Because an appeal is an integral part of Ohio's system for adjudicating guilt or innocence: its procedure for review must not violate a defendant's federal Due Process Rights. SEE Evitts v Lucey (1985) 469 U.S. 387,393. Peace appeals Criminal Case 97-29-CR. The time to file timely appeal has expired. How-ever, Ohio established a system of delayed appeals by Leave of Court App Rule 5 (A)

governs delayed appeals the Rule states in part: (A) Motion by defendant for delayed appeal.

(1) After expiration of the thirty day period provided by App Rule 4 (a) for the filing of a notice of appeals 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 Procedures: (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 appeal in the form prescribed by App Rule 3 and shall file a copy of the notice of 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 Rule 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 Rule 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 (November 2, 1999), Franklin App No. 99AP-1085. { Memorandum Decision}. quoting State v. Cromlish (September 1, 1994) Franklin App No. 94APA06-855.

A proper motion for leave must address 2 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 Rule 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 (December 13, 2002) 11th District No. 2002-T-0093.

Peace, asserts the reasons he was unable to perfect a timely appeal as of right within the 30 days allotted are as follows:

1. Peace did not know he could have a court appointed counsel for appeals purposes as he is an indigent defendant , and his former counsel did not file a notice of appeal nor was an appeal spoken about with Peace.
2. Peace was also unaware of the thirty day limit to file an appeal of right.
3. Peace was not aware of being able to appeal maximum sentencing.
4. Peace was unable to understand much of anything at the plea colloquy, and could not remember much of the happenings of that day.
5. Peace did not and does not, have his plea and sentencing transcripts as App Rule 7 (C) makes it impossible to cite errors from memory, , nor has Peace had the opportunity to review his plea and sentencing transcripts.
6. Peace furthermore, never received nor reviewed his “discovery” as former attorney Jefferey J. Helmick recently as of October 19, 2011 turned over Peace's criminal discovery for case number 97-29-CR, after much delay on the attorney's part.
7. Peace was given incorrect information when Judge Warren told Peace if he did appeal he would face death row which is also coherisive.
8. Peace was incarcerated in the Hancock County Jail for over 2 years, in which time Peace spent

an additional approximate 2 weeks , 14 days of the 30 days allotted by App Rule 4 (A) , with no means or access to an attorney , spent another approximate 14 days in C.R.C. Intake status and the placed in separation block from co-defendant Ian M. Duran . On September 19, 1999 Peace lost his Father, then Uncle Who Peace was very close to, Peace became depressed in dealing with prison issues and a new dangerous environment ,as well as self-destructive. Peace learned by speaking to an S.O.C.F. Legal Clerk in which Peace started requesting” Docket Transcripts” believing these to be what Peace needed to appeal, which is now obviously not the case.

After the 30 days passed per App Rule 4 (A) Peace was unable to be granted leave to delayed appeal, due to not having the evidence to show this Honorable Court , nor understanding what the “boiler plate motion “ was asking of Peace in way of explanation . How-ever Peace has made two other attempts to secure a granted leave to file a delayed appeal. Peace did not and does not have his plea and sentencing transcripts, furthermore according to the Hancock County Common Pleas Courts, Even-though Peace is indigent, unless Peace purchases his plea and sentencing transcripts , he may not have a copy of said transcripts.

“ There can be no equal justice when 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}. Also in RE Beck, 7th District No. 00BA52, 2002, Ohio 3460 at P29 [PONZI Supra]

“ Only a flagrant, substantial disregard for the court rules can justify a dismissal on procedural grounds “ Id at P28 quoting De Hart v. Aetna Life Ins. Co. (1982), 69 Ohio St 2d 189, 193 431, N.E. 2D 644. The Supreme Court of Ohio has, again and again, instructed the lower courts of this state that cases are to be decided on the merits, and that the various rules of court are to be applied so as to achieve substantial justice. Cf. State ex rel Lapp Roofing &Sheet Metal Co. Inc. v. Indus Comm 117 Ohio St 3d 179, 2008 Ohio 850, at P12, 882 N.E. 2D 911; De Hart at 192.

1. Trial Court errs by exceeding it's proper Authority when it inflicts punishment during sentencing

by relying on a Pre-Sentence Investigation or P.S.I. Report, as fact that was neither presented to a jury nor admitted to by the Appellant. SEE Judgment Entry File Stamped February 11, 1999,

2. Trial Court errs in sentencing Appellant to Consecutive , non-minimal terms . Exhibits A Page 3.
3. Trial Court errs when inflicting punishment that should be merged as “ Allied Offenses” Pursuant to R.C. 2941.25 (A) As all a rec part of the same transaction from fact patterns of the case. Exhibit A Page 4.
4. Trial Court violated Criminal Rule 11 by not insuring that Peace knowingly, willingly, intelligently, voluntarily waived his rights, understood his rights before waiving them as Peace was heavily sedated and under the influences of mind altering medications. Petition to Enter a Plea of Guilty File Stamped September 28 1998, Page 5 Exhibit B.
5. Trial Court errs in purposely removing one (1) year from original plea agreement of Thirty-Five (35) years to life, and from a maximum sentence to prevent Peace from appealing ,thus violating his Constitutional Rights to Due Process. Exhibit B Page 3
6. The Fostoria Police botched evidence to be used in the trial of Peace by mishandling, tainting and destroying evidence that would have proven Peace not guilty of the indictment charged. Exhibit C Pages 1-5 Dated April 1, 1997 “ Discrepancy Notice”.
7. The Hancock County trial courts failure to explain “ Compulsory Process” in the plea colloquy in violation of criminal Rule 11 (C) (2) (C) and strict compliance standards of the times. Exhibits D Page 2 SEE Statements made by Mr. Micheal Howard on April 16, 1997 Also See Affidavit of Mr. Todd E. Peace Exhibit E .
8. The Fostoria Police Department denied Peace's “Miranda Rights “ when interrogated and detained after requesting an attorney invoking his Fifth(5)and Sixth (6) Amendments Rights . Exhibits F Transcripts of June 22 nd 1998, Pages 50-54,59 60,61.62 also SEE Prosecutions response that admits no ruling to motion, and SEE Exhibits I former Attorney Jeffrey J. Helmick's response that stated “the state ruled against us” dated November 7, 2011.

Furthermore SEE Exhibits J “ Waiver of Rights” dated January 28, 1997, NOT on January 27,1997, at 5: 35 pm as claimed {The detective gave false testimony} SEE Pages 52,53,54, SEE also Fostoria Police Radio Log dated January28, 1997 Page 2 depicts where Peace was not in his right mind , the entry state “ NEED UNIT AT 10-3, “He's Wiggin out”.

9. Trial Court errs when Fostoria Police Coerces Peace into a confession by promises of leniency and taking advantage of a mentally unsound person , who was unable to understand the consequences of speaking to the interrogators without counsel. Exhibits F,G, J, K.

10. Trial Court errs by allowing Prosecution to make false statements on the face of Peace's criminal indictment stating “Defendant Arraigned and Pleads Guilty to This Indictment”.

When on the Journal Entry dated for February 13, 1997, Peace Plead Not Guilty . Peace was never to receive a jury trial as the indictment already had Peace pleading guilty. SEE Exhibits L,M,and N {both Certified Copies}.

Peace stated the State , who never got the chance to argue any merits , would have likely contended that Peace has allowed too many years to pass and was not diligent in his assertions of his Constitutional Rights . How-ever it is note-worthy to state Peace Has requested his Plea file his appeal nor be expected to present a viable defense to prove the Constitutional violations. Peace, {Which has not been spoken of yet } filed a Habeas Corpus , in 2002. In that writ are some of the same allegations that Peace just now as of Approx. October 19, 2011, was able to obtain the information now enclosed in this review. The negligence that caused Peace's delay is not rooted through Peace's in efforts to his Constitutional rights. Peace has tried on several different occasions and ways to obtain a meaningful appellate review. The Trial judge nor Attorney protected Peace's rights when he was most vulnerable. Peace was sedated and very placid and unable to stand-up for himself, let alone lodge a objection on his behalf as counsel should have done. If memory serves correctly, judge told Peace if he did appeal he'd face the death penalty, which is incorrect.

Peace also calls upon Criminal Rule 52 Which states : (A) Harmless error and plain error

“Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.

(B) Plain Error : Plain error or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.”

The Third District Court of Appeals Errs When Abusing It's Discretion At Denial of Leave to

File A Delayed Appeal: It is well settled what is an abuse of discretion standard State v Smith

1977 49 Ohio St. 2d 261, 361 N.E. 2D 1324. An abuse of discretion connotes more than court

acted Unreasonably, Arbitrarily or Unconscionably. State v Nagle (June 16, 200) 11District No.

99- 1-0089 citing Blakemore v Blakemore (1983) 5 Ohio St. 3d 217,219 450 N.E. 2D 1140

Which incorrectly implies that a trial court may commit an error of law without abusing it's

discretion.State v Boles Montgomery App No. 23037, 2010-Ohio- 278, to the contrary no

court, not even a Supreme Court has the Authority , within it's discretion to commit an error of

law: The abuse of discretion standard is more accurately defined as an appellate court's

standards for reviewing a decision that is asserted to be grossly unsound, unreasonable, illegal

and unsupported by the evidence quoting: Black's Law Dictionary Eighth Edition (2004). Peace

Contends The Third District of Appeals engaged in abuse of discretion. Peace alleges a “

Manifest Injustice” has taken place. The term has never been concretely defined. Rather the

concept remains a flexible one, and whether Manifest Injustice exists depends on the fact and

circumstances of each case. The definition used by this court in State v Smith 361 N.E. 2D

1324 is instructive “ Manifest relates to some fundamental flaw in the proceedings which

results in a miscarriage of justice or is inconsistent with the demands of Due Process quoting _

State v Hall 2003 Ohio 6939. Peace has the right to a remedy in accordance to Equal Protection

Clause of the Ohio Constitution. SEE Ohio Const. Art. 1, Sec 16 redress for injury and due

process therefore, Peace shall have a right to remedy at law, and barring Peace from his right to

appeals is an abuse of discretion by the Appellate Court, {Emphasis Added} SEE State v Tinney 2012 Ohio 72 Id at [P31]. In State v Padgitt November 2, 1999 Franklin App No. 99AP-1085 (Memorandum Decision) quoting State v Cromlish (September 1, 1994) Franklin App No. 94- APA 06-855. There is a criteria set where as two (2) specific issues must be applied. “ 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 Rule 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 (December 13, 2002) 11District No. 2002-T-0093 . How-ever The Third District Appellate Court only cites for reason for their denial. “ Upon consideration the court finds that Appellant's Motion for Leave does not set forth sufficient reason for the delay and failure to timely file a Motion of Appeal from the February 11, 1999 judgment of conviction and sentence entered after the filing of Appellant's guilty pleas . “ How-ever The court does not state the “ failing “ or what case or “measuring stick” is used for sufficient evidence.” The court does not include the fact that Peace filed for” Leave to File Delayed Appeal” November 2010, and at that time the State's Opposition was in reference to 2853.08

(d)

furthermore the State as previously stated did not respond to Peace's request for Leave. The Third District Appears to be punishing Peace for finally uncovering important evidence that was recovered November 2011, from previous Attorney and provided as evidence with Peace's “Motion to Leave to File a Delayed Appeal” , Peace urges this Honorable Court to preview stated evidence filed on March 21, 2012. Furthermore , The Third District Court appears to use Peace's 2002 filings as a basis for denial when there is no time limitations, {providing the

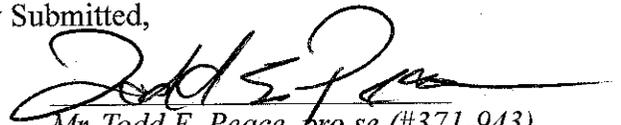
evidence is presented} , nor a procedural bar to prevent Peace from filing successive motions for Leave to File a Delayed Appeal. Under the Anti-Terrorist Effective Death Penalty Act (A.E.D.P.A.) of 1996: The Futility Clauses allows Peace Relief. Porter v Horn 276 F. Supp 2d 278: “ Under the “futility exceptions” to the exhaustion requirement , if state procedural rules bars the applicant from seeking further relief on unexhausted claims in State Courts, the exhaustion requirements is satisfied because there is “ An absence of Available State corrective process [Denial of Direct Appeal , Denial of Plea and Sentencing Transcripts at State expense , Denial of Due Process], {Emphasis Added} Id citing 28 U.S.C. § 2254 (b) , Coleman 501 U.S. At 750, 111 S.ct 2546; Lines 208 F. 3d at 165-66. How-ever in the case where the futility exception applies, the claim is considered to be procedurally defaulted and may only be reached by Federal Courts if petitioner makes the showing of Cause and Prejudice” , [Denial of Plea and Sentencing Transcripts at state expense, Denial of Direct Appeal and being prejudice by a res judicata bar and Denial of Appeals]{Emphasis Added}, or establish a fundamental miscarriage of Justice” [Denial of “ Miranda Rights” and multiple violations of the fifth (5th), sixth (6), and eighth (8) Amendments Violations], {Emphasis Added}. Citing Lines supra . Peace previously stated in Exhibits A-N and 1-7 filed with March 21, 2012. “ Motion for Leave to File a Delayed Appeal” and in the case now pending before this Honorable Court State v Peace # 12-0160 Hancock County , Third District Appellate Court. Peace does not have his plea and sentencing transcripts, The State also never had the aforementioned transcripts , transcribed , nor allowed Peace the opportunity to review the same , Peace calls upon the “Futility Clauses “ Established Rights to Appeal his criminal conviction be provided with a copy of his plea and sentencing transcripts at state expense is a abuse of discretion, Wolfe v Randle 267 F. Supp 743 746-747 and citing Peguro v U.S. (1999) 526 U.S. 23 S. ct 961. Peace

asserts the act of denial of Leave to File a Delayed Appeal is Absurd. Unlawful rulings that are Unreasonable, Unconscionable, Arbitrary and Illegal. The Third District Court of Appeals has created yet another situation to deny Peace fundamental Federally Protected Rights, SEE Greene v Brigano (1997) 6TH cir 123 F. 3d 917.

Certificate of Service

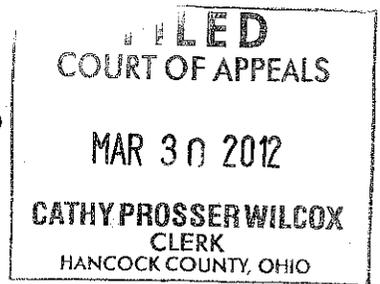
I, Appellant, Todd E. Peace, hereby certify that a true copy of **Memorandum in Support OF Jurisdiction OF Appellant** the foregoing has been sent the Hancock County Prosecutor's Office, at 222 Broadway Rm 104, Findlay, Ohio 45840, On this 15th day of April 2012.

Respectfully Submitted,



Mr. Todd E. Peace, pro se (#371-943)
Lorain Correctional Institution
2075 S. Avon- Belden Rd.
Grafton, Ohio 44044-

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
HANCOCK COUNTY**



STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 5-12-14

v.

TODD E. PEACE,

**J U D G M E N T
E N T R Y**

DEFENDANT-APPELLANT.

This cause comes on for determination of Appellant's motion for leave to file a delayed appeal.

Upon consideration the Court finds that Appellant's motion for leave does not set forth sufficient reason for the delay and failure to timely file a notice of appeal from the February 11, 1999 judgment of conviction and sentence, entered after the filing of Appellant's guilty pleas. See App.R. 5(A). Moreover, the record reflects that, among the numerous post-judgment motions, appeals and original actions filed by Appellant, is a prior and unsuccessful motion for delayed appeal in 2002. See App.No. 5-02-11. Accordingly, the motion is not well taken.

Case No. 5-12-14

It is therefore **ORDERED** that Appellant's motion for leave to file a delayed appeal be, and the same hereby is, overruled at the costs of the Appellant for which judgment is hereby rendered.

Arthur Shaw
1 Boston
John B. Villamonte
JUDGES

DATED: MARCH 30, 2012

/jlr

I, the undersigned, clerk of the Common Pleas Court within and for said County, do hereby certify that the foregoing is a true and correct copy of the original Judgment Entry on file in his office.
[Signature]
Clerk of the Common Pleas Court