

IN THE SUPREME COURT OF OHIO

12-1595

Martin McMichael,

Appellant,

v.

State of Ohio,

Appellee.

On Appeal From the Franklin  
County Court of Appeals,  
Tenth Appellate District

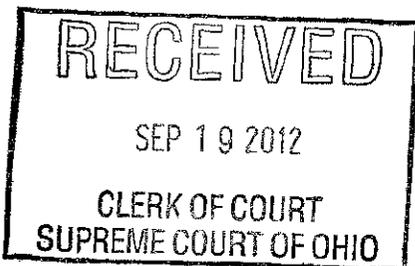
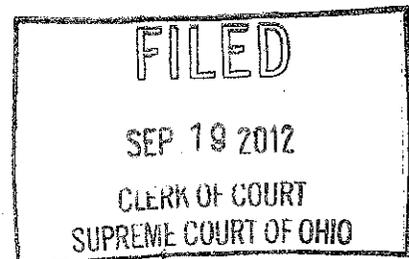
Court of Appeals  
Case No. 11AP-1042,  
11AP-1043, and 11AP-1044

MOTION FOR DELAYED APPEAL

Martin McMichael #645-878  
Ross Correctional Inst.  
P.O. Box 7010  
Chillicothe, Ohio 45601  
Pro se

Ron O'Brien  
Franklin County Prosecutor  
and  
Barbara A. Farnbacher  
Assistant Franklin County Prosecutor  
373 S. High St. 13<sup>th</sup> Floor.  
Columbus, Ohio 43215

COUNSEL FOR APPELLEE



## MEMORANDUM IN SUPPORT

The Appellant Martin McMichael (herein after "Appellant or Mr. McMichael") is seeking permission from this Court to file a delayed appeal from the judgement of the Franklin County Court of Appeals, Tenth Appellate District, entered in Court of Appeals Case No. 11AP-1042, 11AP-1043, and 11AP-1044<sup>1</sup> on July 12, 2012. Because the judgment of the Court of Appeals was decided on July 12, 2012 then the deadline for filing an appeal to this Court was August 27, 2012.

The Appellant Mr. McMichael's is a pro se litigant and is currently incarcerated at Ross Correctional Facility. At the Ross Correctional Facility, the prison houses two distinct security levels whom are separated from one another and are not generally permitted co-exist amongst each other. As such, access to the Law Library at the Facility is limited to accommodate to two different security level inmates. The library at the Facility is open Sunday thru Thursday for 3 hours per day for each distinct security level, with only 10 inmates from each separate units permitted at a time. The Appellant has attached a library to this Memorandum. Because of these limitations it was difficult for the Appellant to get his Notice of Appeal and Memorandum In Support done in a speedy fashion.

However, it was completed on August 22, 2012 and given to the Mailroom here at the Facility on that same day. The next day the documents were returned to the Appellant because he did not have enough funds on his account to pay for postage. The Appellant again submitted the documents to the Mailroom on August 24, 2012 with enough money on his account to cover the postage. August 24, 2012 was a Friday and the documents should have reached this Court by the Monday August 27, 2012 deadline. For some reason they did not but were received by the Office of The Clerk for this Court on August 29, 2012. Because they were late the documents were returned by the Clerk for this Court to the Appellant through "inter-departmental" mail on September 10, 2012.

The Appellant missed the deadline by two days. However the Appellant did not miss the

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<sup>1</sup> Cases were not consolidated but should have been. Nevertheless the cases involve one appeal and were decided together.

deadline because he was not diligent in pursuing this appeal, but first because of the difficulties and limitations imposed by the law library. Second, because the Appellant did not have the funds on his account, originally, there was a minor delay in getting the documents timely to this Court by the deadline.

The Appellant prays this Court will find that he was diligent, despite the circumstances, and permit him to file this delayed appeal.

Respectfully submitted,



Martin McMichael #645-878

P.O. Box 7010

Chillicothe, Ohio 45601

Pro se

**CERTIFICATE OF SERVICE**

I Hereby certify that a copy of this motion was sent by Regular U.S. Mail to counsel for Appellee, Barbara Farnbacher, at 373 S. High St. 13<sup>th</sup> Floor Columbus, Ohio 43215 on September 14, 2012.



Martin McMichael