

ORIGINAL

IN THE SUPREME COURT OF OHIO

12-1661

CHRISTOPHER M. KING,  
Appellant,  
v.  
STATE OF OHIO,  
Appellee.

: Supreme Ct. No.  
: On Appeal from the Stark County  
: Court of Appeals,  
: Fifth Appellate District  
: Court of Appeals  
: Case No. 2012CA00131  
: Motion for Delayed Appeal

MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT CHRISTOPHER M. KING

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EXPLANATION OF WHY THIS FELONY CASE IS A CASE  
OF PUBLIC AND GREAT GENERAL INTERESTS AND INVOLVES  
SUBSTANTIAL CONSTITUTIONAL QUESTIONS

The Supreme Court of Ohio has noted that the state constitutional provision "due course of law" of Section 16, Article 1 of the Ohio Constitution has been analyzed and found to be the equivalent of the due process clause of the Fourteenth Amendment to the United States Constitution. State ex rel. Heller v. Miller(1980), 61 Ohio St.2d 6, 399 N.E.2d 66. The "due course of law" provision protects the citizens of the state of Ohio, in the same manner as does the federal due process clause, against arbitrary actions by the government.

In Ohio, the right to file an appeal, as it is defined in the appellate rules, is a property interest and a litigant may not be deprived of that interest without due process of law. Atkinson v. Grunman Ohio Corp.(1988), 37 Ohio St.3d 80, 523 N.E.2d 851.

In Miller v. Miller, 2008 Ohio 2106, at P14, the Court found that "the right to an appeal is not a vested one. The Ohio Constitution clearly indicates that the law provides the basis for appellate jurisdiction. See Art. IV, Sec. 3(B)(2). \*\*\* Therefore, the availability of an appeal depends upon a litigant's procedural conformance. Specifically, it depends upon him filing his notice of appeal within the thirty day time frame provided by law. Since the Appellate Rules limit a litigant's ability to obtain an appeal, the right to appellate review is not absolute and, therefore, cannot be a vested right. See Harden v. Ohio Atty. Gen., 109 Ohio St.3d 137, 2004 Ohio 382, at P9, 802 N.E.2d 1112."

A vested right is one that "so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent." Harden at P9, quoting Black's Law Dictionary(7th Ed. 1999) 1324.

"[O]nce the state grants the right to appeal it must follow procedures

comporting with the Fourteenth Amendment. *Evitts v. Lucey*, 469 U.S. 387, 403, 83 L. Ed. 2d 821, 105 S.Ct. 830(1985). After deciding that a right to appeal is essential, the state cannot then deny defendant due process. Due Process claims are implicated when a defendant is denied an adequate opportunity to present his claim and receive an adjudication on the merits, or when defendants are treated differently in such a way that affects their ability to pursue a meaningful appeal. *Id.* at 402, 405. Ohio has granted all defendants the right to appeal following a criminal conviction, and as a result must conform its procedures to the standards of due process. *Ohio R. Crim. P 32." Wolfe v. Randle*, 267 F.Supp.2d 743.

**Crim.R. 32(B)(2)** mandates: "After imposing sentence in a serious offense, the court shall advise the defendant of the defendant's right, where applicable, to appeal or to seek leave to appeal the sentence."

Relevant hereto, is **R.C. 2953.08(A)** which, in part, provides: "In addition to any other right to appeal \*\*\* , a defendant who \*\*\* pleads guilty to a felony may appeal as a matter of right the sentence imposed upon the defendant on one of the following grounds: (3) The person \*\*\* pleaded guilty to a \*\*\* designated homicide \*\*\* ."

A party's right to appeal is rendered meaningless unless he has a reasonable opportunity to file a timely notice of appeal. *Rothman v. Rothman*, 124 Ohio St.3d 109, 2009 Ohio 6410, 919 N.E.2d 728. Due process is offended when a defendant who pled guilty is kept completely ignorant of his appellate rights. Cf. *Peguero v. U.S.*, 526 U.S. 23, 119 S.Ct. 961, 143 L. Ed. 2d 18.

This case presents a situation where on July 10, 2012, the appellant sought leave to file a delayed appeal of the November 13, 1991 Judgment Entry imposing a sentence for murder because the trial court did not advise the indigent defendant of his right to appeal, and the right to appointment of

appellate counsel, after failing to honor the plea bargain induced by the prosecution's promise that the sentence being imposed would run concurrent to the entire sentence the appellant had already begun serving for aggravated murder and aggravated robbery.

The right of notice is more fundamental than the rights previously guaranteed by the Supreme Court. Precedent therefore dictates that failure to inform an indigent defendant of their appellate rights violates due process. \*\*\* [D]ue process rights are implicated when a delayed appeal is the result of a lower court's failure to ensure that an indigent defendant's appellate rights are protected. *Wolfe*, supra, at 747.

The Court of Appeals denied the appellant's delayed appeal motion based upon an over twenty (20) year delay, finding that the trial court's failure to advise the appellant of his appellate rights are not credible or justifiable. The plain language of the rule [**Crim.R. 32(B)(2)**] provides that advisement of rights is required after the imposition of sentencing. *State v. Gordon*, 2011 Ohio 1045, at P13.

Although many Ohio Appellate Districts hold that the length of time passed from the time of an appellant's conviction and sentence until the filing of his motion for delayed appeal is evidence of his non-diligence in taking the proper steps to protect his own rights, and do not satisfy the requirements of **App.R. 5(A)**, it is an unreasonable application of clearly established Supreme Court precedent.

This position of conflict in appellate courts' denials of delayed appeal motions due to a time limit is similarly taken, as expressed in two (2) dissenting opinions, by Judge Colleen Mary O'Toole of the Ohio Eleventh Appellate District. In *State v. Smith*, 2009 Ohio 292, at P14-P15, Judge O'Toole stated:

"There specifically is no time limit for appellant to assert his consti-

tutional right to an 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.

"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."

The public and great general interests of this issue are inherent in an appellate court judge's performance of the statutory and constitutional obligation for which they were elected. The public's confidence in the appeal court's reviewing protection of constitutional rights become infirm when their decisions arbitrarily dilute the significance of fundamental guarantees encompassing liberty interests.

In *State v. Leister*, 2009 Ohio 5901, at P17, Judge O'Toole's dissenting opinion reflects this viewpoint when stating: "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. 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. Cr. 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."

In this case, the Court of Appeals' denial of the appellant's motion for delayed appeal ignores the manifest injustice evident in the implementation of the illegal plea agreement underlying the conviction and sentence, wherein the prosecutor's promise was breached, and is a direct denial of the right to legal redress of injuries created by **Section 16, Article 1 of the Ohio Constitution.**

Other substantial constitutional questions arising in this matter from the illegal plea bargain, beyond the obvious due process violations, are the deficient performance of court appointed defense counsel and denial of the **Compulsory Process protections of the Sixth Amendment**, resulting in the prosecution of a murder by a Bill of Information, although forbidden by **Section 10, Article 1 of the Ohio Constitution**, the **Fifth Amendment to the U.S. Constitution**, **R.C. 2941.021** and **Crim.R. 7(A)**.

Furthermore, the obvious breach of the plea bargain promise in this case is demonstrative of the necessity for appellate review of the trial court proceedings, where it is clearly evident that the appellant would not have entered the plea agreement otherwise.

As such, the prejudice to the appellant, if the appellate courts' denial of this delayed appeal is permitted to stand, is substantial. The irreparable injury to the concept of justice establishes a precedent that suggests that a trial court is no longer obligated to protect a criminal defendant's constitutional rights, and that the assurance of meaningful access to the courts for

a redress of injuries will not be equally applied to citizens of the United States who are similarly situated, regardless of the law governing against such actions.

As held by the **Wolfe** court, [t]he 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." **Jacobs v. Mohr**, 265 F.3d 407, 419 (6th Cir. 2001) citing **Goodwin v. Cardwell**, 432 F.2d 521, 522-23(6th Cir. 1970). The defendant has ultimate authority in making certain fundamental determinations pertaining to his case, including the right to appeal. **Jones v. Barnes**, 463 U.S. 745, 751, 77 L.Ed.2d 987, 103 S.Ct. 3308(1983). The authority to pursue an appeal, even one following a guilty plea, is the defendant's alone. **Marrow v. United States**, 772 F.2d 525, 530(9th Cir. 1985).

Appropriately applicable to this case is the Supreme Court of Ohio's finding in **State v. Sims**(1971), 27 Ohio St.2d 79, 272 N.E.2d 87, 91, that "in the absence of evidence in the record upon which it could be determined that an indigent convicted defendant knowingly and intelligently waived his right of direct appeal ... it was error for the Court of Appeals to dismiss the motion for leave to appeal without making such a factual determination."

The record in this matter consists, mainly of the Judgment Entry, Plea Agreement and Bill of Information. "A court of record speaks only through its journal entries." **State ex rel. Geauga Cty. Bd. of Commrs. v. Milligan**, 110 Ohio St.3d 366, 2003 Ohio 6608, 800 N.E.2d 361, ¶20. The Judgment Entry in this case contains zero mention of the appellant's appellate rights, supporting the appellant's standing that the trial court failed in its **Crim.R. 32(B) (2) and (3)** obligations.

The record also supports the standing that the appellant did not knowing-

ly and intelligently wasive his right to direct appeal in this case.

Therefore, the Ohio Court of Appeal's decision denying the appellant's Motion for Delayed Appeal was an unreasonable application of clearly established Supreme Court precedent, and, thus, this Court must grant jurisdiction to hear this case and properly adjudicate the merits of the claimed errors occurring at the trial court, which are direct violations of the appellant's State and Federal Constitutional Rights.

#### STATEMENT OF THE CASE AND FACTS

On November 13, 1991, after being conveyed from the Lorain Correctional Institution to the Stark County Court of Common Pleas to attend a scheduled trial for an indicted receiving stolen property offense in case number 91-1268, the appellant was confronted with an aggravated murder accusation for which a grand jury indictment had not been issued, although punishable by death or life imprisonment.

Defense counsel, already appointed to represent the appellant on the receiving stolen property offense, was then appointed to represent the appellant in defending against the aggravated murder accusation.

Respective to the aggravated murder accusation, there was not a pre-trial investigation conducted, nor a discovery demand obtained.

Subsequently, on November 13, 1991, newly appointed defense counsel, and an Assistant Prosecuting Attorney for Stark County, presented a plea bargain agreement to the appellant, requiring that he plead guilty to murder, a violation of R.C. 2903.02(A), and that the appellant's benefit would be that the fifteen (15) years to life imprisonment term imposed would be ordered to be served CONCURRENT to the aggravated murder and aggravated robbery sentence the appellant already began serving on Summit County Case Number CR 10487.

The trial court's sentence imposed for the murder plea in this case was

ordered to be served CONCURRENT to the aggravated robbery, but CONSECUTIVE to the twenty (20) years to life sentence for the aggravated murder conviction.

The Stark County trial court failed to advise the appellant of his right to appeal the sentence, the right to appointed counsel for assisting with the appeal, nor the right to the transcript of the proceedings for purpose of perfecting an appeal after imposing the sentence in this case, contrary to the prosecutor's promise inducing the plea agreement.

On several occasions, the appellant sought to remedy the manifest injustice occurring before the trial court.

On July 14, 2005, the appellant file a Motion to Withdraw Guilty Plea and Request for the Court to Vacate Sentence Pursuant to Ohio Cri. R. 32.1, and Ohio Crim. R. 7(A), R.C. 2941.021.

No opposing memorandaum was filed.

On July 21, 2005, the trial court entered its Judgment Entry Denying Defendant's Motion to Withdraw Guilty Plea.

The appellant did not pursue an appeal of this action.

On August 26, 2005, the appellant filed a Memorandum and Motion for Dismissal or Vacate Judgment for Lack or Subject Matter Jurisdiction.

On November 29, 2005, the State's Response to Memorandum and Motion for Dismissal or Vacate Judgment for Lack or Subject Matter Jurisdiction was filed.

On December 6, 2005, the trial court's Judgment Entry Denying Motion for Dismissal or to Vacate Judgment for Lack or Subject Matter Jurisdiction was filed.

On January 9, 2006, the appellant filed a Notice of Appeal and Docketing Statement to the Fifth District Court of Appeals, case number 2006CA00011.

On January 20, 2006, the appellate court dismissed the appellant's appeal

for being untimely, by four (4) days.

On March 9, 2006, the appellant filed a Notice of Appeal to the Supreme Court of Ohio, case number 06-0419.

On June 15, 2006, the Ohio Supreme Court dismissed the appellant's request for discretionary review.

On October 3, 2007, the trial court received Defendant's Letter to Judge and misconstrued the correspondence as a Motion for Reduction or Modification of Sentence. On the same date, the trial court denied the action.

On July 10, 2012, the appellant filed a Motion for Delayed Appeal to the Fifth District Court of Appeals, asserting that the trial court failed to advise him of his right to appeal after imposing its sentence on November 13, 1991, as required by Crim.R. 32(B)(3).

No opposing memorandum from the State was filed.

On August 17, 2012, the court of appeals denied the appellant's delayed appeal motion, stating that the " reasons presented by Appellant are not credible and do not justify a delay of over twenty years."

The appellate court erred, to the prejudice of the appellant, when failing to grant the right to a direct appeal of the sentence imposed in this case, denying the appellant the right to a redress of the numerous injuries resulting from the trial court proceedings.

In support of the position of this issue, the appellant presents the following legal arguments.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

**Proposition of Law No. I: A Court of Appeals' refusal to grant a motion for delayed appeal deprives an appellant of meaningful access to the courts for a redress of injuries and due process of law.**

"Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when

plainly and reasonably made, is not to be defeated under the name of local practice." *James v. Kentucky*, 466 U.S. 341, 104 S.Ct. 1830, quoting *Davis v. Wechsler*, 263 U.S. 22, 24(1923).

In pertinent part, Amendment I of the United States Constitution sets forth: "Congress shall make no law \*\*\* prohibiting \*\*\* the right of the people \*\*\* to petition the Government for a redress of grievances."

Accordingly, Article 1, Section 16 of the Ohio Constitution sets forth: "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

In Ohio, the right to file an appeal \*\*\* is a property interest. See, *Atkinson*, supra.

On November 13, 1991, the Stark County trial court had a constitutional and statutory obligation to advise the appellant of his right to appeal the sentence imposed for a guilty plea to murder, a designated homicide pursuant to R.C. 2953.08(A), in this case.

As the record in this case demonstrates, the trial court failed to advise the appellant of his right to a direct appeal pursuant to Crim.R. 32(B)(2) & (3).

On July 10, 2012, the appellant sought to assert his right to direct appeal by filing a motion for delayed appeal, claiming the trial court's failure to advise, while demonstrating the requisite meritable errors for appellate review, pursuant to App.R. 5(A).

" ' \*\*\* This claim (failure to advise regarding appeal rights) is properly raised by way of motion for leave to appeal in a Court of Appeals (*State v. Sims*, 27 Ohio St.2d 79), \*\*\* .' " *State v. Hester*, 45 Ohio St.2d 71, 341 N.E. 2d 304.

The appellant contends that the August 17, 2012 appellate court decision denying the delayed appeal motion violated his due process protections, and denied him of the meaningful access to the courts for redress as afforded by the **United States and Ohio Constitutions.**

In addressing the issue of an access to the courts claim, the United States Supreme Court, in **Christopher v. Harbury**, 536 U.S. 403, 414-415, 122 S. Ct. 2179, 2186-87, 153 L.Ed.2d 413(2002), held that: " \*\*\* Whether an access claim turns on a litigating opportunity yet to be gained or an opportunity already lost, the very point of recognizing any access claim is to provide some effective vindication for a separate and distinct right to seek judicial relief for some wrong."

Herein, the separate and distinct right to seek judicial relief is found in the right to appeal, **Art. IV, Sec. 3(B)(2)**, which in this case is an opportunity already lost due to the trial court's breach of its constitutional and statutory obligations.

As such, the Court of Appeals was obligated to provide the appellant the opportunity to assert the right to appeal, yet, deprived the appellant of the right to access the courts for a redress of his injuries.

**Proposition of Law No. II: The judgment in this case, unlawfully prosecuted, is void ab initio.**

"If an act is unlawful it is not erroneous or voidable, but is wholly unauthorized and void." **state v. Simpkins**, 117 Ohio St.3d 420, 884 N.E.2d 568, at ¶21, quoting **State ex rel. Kudrick v. Meredith**(1922), 24 Ohio N.P.(N.S.) 120, 124, 1922 Ohio Misc. LEXIS 262, \*3.

"Void ab initio" means: "Null from the beginning, as from the first moment when a contract is entered into." **Black's Law Dictionary**(9th Ed. 2009) 1709.

" '[A] plea bargain itself is contractual in nature and "subject to contract-law standards." ' " **State v. Dye**, 127 Ohio St.3d 357, 2010 Ohio 5728, 939 N.E.2d 1217, quoting **Baker v. United States**(C.A. 6, 1986), 781 F.2d 85, 90.

The appellant entered a plea of guilty for violation of R.C. 2903.02, murder, as defined in 1991, which required a sentence of fifteen (15) years to life imprisonment be imposed.

The prosecution, plea agreement and sentence for murder were executed upon a Bill of Information.

In relevant part, Article 1, Section 10 of the Ohio Constitution sets forth that: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury."

The Fifth Amendment to the United States Constitution contains the exact same language as above.

In compliment, R.C. 2941.021 provides that "any criminal offense which is not punishable by death or life imprisonment may be prosecuted by information."

Accordingly, **Crim.R. 7(A)** mandates that "a felony that may be punished by death or life imprisonment shall be prosecuted by indictment."

The constitutional, procedural and statutory laws clearly requires that an indictment of a grand jury for the prosecution of a violation of R.C. 2903.02, murder, an infamous criminal offense punishable by life imprisonment.

Simply, it is illegal to prosecute a murder offense in Ohio by information. The term "illegal" generally means "forbidden by law." **Black's Law Dictionary**(9th Ed. 2009) 815.

As is clearly evident herein, the plea agreement convicting the appellant of murder, by Bill of Information, and resulting sentence is a void judgment.

The effect of a void judgment is that the judgment is a nullity, and the

parties are in the same position as if there had been no judgment. See, *State v. Bezak*, 114 Ohio St.3d 94, 2007 Ohio 3250, 868 N.E.2d 961, at P12-P13.

**Proposition of Law No. III: Defense counsel's deficient and incompetent performance during the pre-trial and plea bargaining stages prejudiced the appellant, contrary to the Sixth Amendment guarantees.**

"Counsel cannot responsibly advise a client about the merits of different courses of action, [and] the client cannot make informed decisions, ... unless counsel has first conducted a thorough investigation ...." *Dickerson v. Baley*, 453 F.3d 690, 694(6th Cir. 2006)(noting that such an investigation "should begin as quickly as possible" in order to aid in plea negotiations(internal quotation marks omitted)).

The Supreme Court has long held that counsel has an obligation to conduct a "reasonable investigation". See, *Stricklan v. Washington*, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674(1984).

In the context of a guilty, relevant hereto, the appellant must demonstrate that "there is a reasonable probability that, but for his counsel's deficient or unreasonable performance, the [appellant] would not have pled guilty" and would have insisted on going to trial. *State v. Xie*, 62 Ohio St. 3d 521, 524, 584 N.E.2d 715 citing *Hill v. Lockhart*(1985), 474 U.S. 52, 58-59, 106 S.Ct. 366, 88 L.Ed.2d 203.

The standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. *North Carolina v. Alford*(1970), 400 U.S. 25, 31, 91 S.Ct. 160.

In this case, court-appointed defense counsel did not conduct a pre-trial investigation of the aggravated murder accusation. Instead, with full knowledge of the illegality, advised the appellant to accept the plea bargain to murder by Bill of Information, with the promise that the sentence imposed would run CONCURRENT to the entire sentence already being served by the him.

Essentially, a reasonable person would contemplate on why the State had failed to seek, or obtain, an indictment from a grand jury, allowing the inference that there was insufficient evidence available to support each element of the offense(s) accused, even that to which the appellant was induced into a plea bargain on.

It is obvious that defense counsel failed to object to the sentence being imposed to the trial court, otherwise the appellant would not have needed to present the current action to this Court.

Evenmoreso, a reasonable mind would conclude that it would be illogical for an individual to voluntarily and intelligently agree to a sentence that, ultimately, guarantees the remainder of his days would be behind bars.

Most prejudicial to the appellant in this issue, is that defense counsel failed to ensure his protection from injury by ignoring the prosecutor's failure to honor its promise.

"When a prosecutor induces a defendant to plead guilty based upon certain promises, the prosecutor has a duty to keep those promises." *State v. Simpson*, 158 Ohio App.3d 441, 2004 Ohio 4690, 816 N.E.2d 609, at ¶14, citing *Santobello v. New York*(1971), 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427.

Therefore, when the prosecutor remained silent at the sentencing hearing and did not recommend that appellant's sentence run concurrent, the state failed to perform on its promise and thereby breached the plea agreement.

Counsel had a duty to object to the prosecutor's conduct and a duty to insist that the prosecutor carry out the terms of the plea agreement or permit the appellant to withdraw his plea. Counsel, however, inexplicably remained silent, breaching his duty to his client. See, *State v. Spence*, 2009 Ohio 6386, ¶.

### CONCLUSION

Although the Plea of Guilty form in this case references the "right to appeal procedural issues reserved upon a Plea of Guilty", under the circumstances of this case, there was no knowing, intelligent and intentional relinquishment of either appellant's right to counsel at appeal or his right to appeal, based upon the trial court's failure to advise the appellant of his appeal rights after imposing sentence.

As a result, the appellant has been required to endure extreme uncertainties and substantial cruelty from the sentence imposed in this case contrary to that offered by the prosecutor.

Where the appellant properly sought a delayed appeal of right from the Court of Appeals, and was denied due to an unsubstantiated and arbitrary time limit, the only recourse available for remedying the substantial constitutional errors in this case is by seeking redress from this Court.

For the reasons discussed herein, this case involves matters of public and great general interests and substantial constitutional questions. The appellant requests that this Court accept jurisdiction in this case so that the important issues presented will be reviewed on their merits.

Respectfully submitted by,

*Christopher M. King*  
\_\_\_\_\_  
Christopher M. King 240-034

APPELLANT, PRO SE

Certificate of Service

I certify that a copy of this Memorandum In Support of Jurisdiction was sent by ordinary U.S. Mail Service, this 26 day of September, 2012, to:

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Christopher M. King  
Christopher M. King 240-834

APPELLANT, PRO SE

**APPENDIX**

JUDGMENT ENTRY OF THE STARK COUNTY COURT OF APPEALS  
(August 17, 2012) ..... Pages 1-2

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

12 AUG 17 AM 11:52

MARK T. BERNARD  
CLERK OF COURT OF APPEALS  
STARK COUNTY, OHIO

STATE OF OHIO

Plaintiff - Appellee

Case No. 2012CA00131

-vs-

CHRISTOPHER M. KING

Defendant - Appellant

JUDGMENT ENTRY

91-1949  
B

This matter comes before the Court upon Appellant's "Motion for Delayed Appeal." Appellee has not filed a response. Appellant seeks to appeal the trial court's entry dated November 13, 1991. He avers he did not timely file a notice of appeal because the trial court failed to explain his appellate rights.

As the Supreme Court has held, "If a movant establishes sufficient reasons justifying the delay, the appellate court may, in its discretion, grant the motion, and the case proceeds as it would have if timely filed." *State v. Silsby* (2008), 119 Ohio St.3d 370, 372, 894 N.E.2d 667, 669.

The reasons presented by Appellant are not credible and do not justify a delay of over twenty years.

MOTION DENIED.

APPEAL DISMISSED.

COSTS TO APPELLANT.

*W. Scott Gi*  
\_\_\_\_\_  
JUDGE

*John A. Edwards*  
\_\_\_\_\_  
JUDGE

*[Signature]*  
\_\_\_\_\_  
JUDGE