

ORIGINAL

IN THE SUPREME COURT OF OHIO  
Case No. 2012-1777

STATE OF OHIO :  
Appellee :  
-vs- :  
MICHAEL DEBARTOLO :  
Appellant :

On Appeal from the  
Cuyahoga County Court  
of Appeals, Eighth  
Appellate District Court  
of Appeals  
CA: 97453

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**MOTION FOR RECONSIDERATION OF DECISION DENYING LEAVE  
TO FILE DELAYED APPEAL**

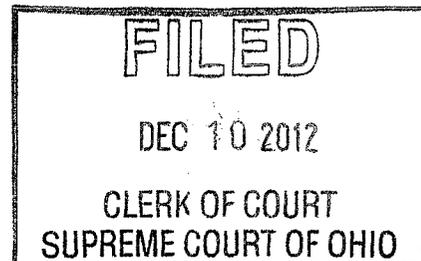
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IN THE SUPREME COURT OF OHIO  
Case No. 2012-1777

STATE OF OHIO	:	
Appellee	:	
-vs-	:	On Appeal from the
MICHAEL DEBARTOLO	:	Cuyahoga County Court
Appellant	:	of Appeals, Eighth
		Appellate District Court
		of Appeals
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Comes now Appellant Michael DeBartolo, through counsel, and moves this Honorable Court to reconsider its 4 to 3 decision (Pfeiffer, Lanzinger and Cupp, JJ., dissenting) denying leave to file a delayed appeal. As discussed below, the Cuyahoga County Prosecutor's Office supports this motion.

The appeal deadline in the instant case was missed during the week following the birth of the daughter of Assistant Public Defender Cullen Sweeney, who was Mr. DeBartolo's counsel. Mr. Sweeney was away from the office that week attending to family responsibilities. His supervisor, undersigned counsel, was mistaken about the filing deadline. As a result, the appeal deadline was missed.

There are two reasons why this Court is asked to reconsider and allow a delayed appeal. First, this case is extremely important to Mr. DeBartolo, who has no prior criminal record, and raises a significant legal issue. This is an involuntary manslaughter case where a key issue is the cause of death of an elderly person. At trial, the medical examiner testified that her examination did not indicate a homicide; yet, she opined that a homicide occurred on the basis of information she gleaned from the police investigation. Whether this is permitted raises substantial constitutional and evidentiary issues. Even if this Court ultimately does not accept this appeal on

its merits, the acceptance of the delayed appeal will allow Mr. DeBartolo to pursue the issue via a federal habeas corpus petition (where he is required to have exhausted his State remedies before petitioning the federal court).

Second, the Cuyahoga County Public Defender's Office, and particularly undersigned counsel, is extremely upset at our omission in this regard. As this Court is aware, this Office is a frequent litigator before the Court and attempts to conscientiously comply with this Court's procedures. Undersigned counsel, as the Appellate Supervisor, personally checks the docket each week to ensure that appeals deadlines are not missed in this Court, but, obviously, a mistake was made in this case. Counsel is extremely sorry for this omission, and prays that Mr. DeBartolo not be called upon to suffer for the mistake of the office that was entrusted to represent him.

Finally, undersigned counsel has spoken with Matthew E. Meyer, Assistant Prosecuting Attorney and Appellate Supervisor for the Cuyahoga County Prosecutor's Office. Mr. Meyer has graciously authorized undersigned counsel to represent that, under these circumstances, the Cuyahoga County Prosecutor supports this motion for reconsideration. If a delayed appeal is permitted, the Cuyahoga County Prosecutor reserves the right to oppose acceptance of the appeal for a merits determination.

Wherefore, Appellant prays for reconsideration and acceptance of his motion for delayed appeal.

Respectfully submitted,

  
JOHN T. MARTIN, ESQ. 0062932  
Counsel for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was hand delivered to Timothy McGinty, Cuyahoga County Prosecutor, 1200 Ontario Street, Cleveland, Ohio 44113, on this 10th day of December, 2012.

  
JOHN T. MARTIN, ESQ.  
Counsel for Appellant