ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	CASE NO: 13-0606
Plaintiff/Appellee	:	On Appeal from the Brown County Court of Appeals, 12th Appellate District
-v-	:	
FRANK FINKBEINER	:	
Defendant/Appellant	:	C.A. CASE NO: CA2012 08 016

MOTION FOR LEAVE TO FILE DELAYED APPEAL
OF APPELLANT FRANK FINKBEINER

FRANK FINKBEINER
Post Office Box 5500
Chillicothe, Ohio 45601
DEFENDANT/APPELLANT

JESSICA LITTLE
200 East Cherry Street
Georgetown, Ohio 45121
COUNSEL FOR APPELLEE

FILED
APR 12 2013
CLERK OF COURT
SUPREME COURT OF OHIO

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STATE OF OHIO	:	CASE NO:
Plaintiff/Appellee	:	On Appeal from the Brown County Court of Appeals, 12th Appellate District
-v-	:	
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Defendant/Appellant	:	C.A. CASE NO: CA2012 08 016

MOTION FOR LEAVE TO FILE DELAYED APPEAL
OF APPELLANT FRANK FINKBEINER

Appellant, Frank Finkbeiner, moves this Court for leave to file a delayed appeal in accordance with S.Ct.Prac.R.II(2)(A)(4)(a). The judgment entry and opinion rendered in the above-captioned Appeal was filed on February 12, 2013, and never submitted to Appellant herein. Appellant's spouse inquired of the Brown County Clerk of Court for an updated status of said appeal on March 20, 2013, and subsequently informed that a decision had been made on February 12, 2013. The attached judgment entry was received a few days after the aforementioned inquiry.

An affidavit supporting these allegations is attached. For the reasons set forth, Appellant requests this Court permit his delayed appeal.

Respectfully submitted,

Frank Finkbeiner

Frank Finkbeiner
Post Office Box 5500
Chillicothe, Ohio 45601
DEFENDANT/APPELLANT

RECEIVED
APR 12 2013
CLERK OF COURT
SUPREME COURT OF OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion For Leave to File Delayed Appeal was forwarded by regular U.S. Mail to Jessica Little, 200 E. Cherry Street, Georgetown, Ohio 45121 on this 11 day of April, 2013.

Frank Finkbeiner

Frank Finkbeiner

AFFIDAVIT

STATE OF OHIO :

SS:

COUNTY OF ROSS:

I, Frank Finkbeiner, swear that the following is true:

1) On or about March 20, 2013, my spouse called the Brown County Clerk of Courts to inquire about my appeal;

2) The Brown County Clerk of Court, in conflict with Civ. R. 58(B), failed to properly serve Appellant the judgment entry of the Twelfth Appellate District of Ohio, time-stamped February 12, 2013, thereby restraining the requisite filing within the (45) day limit.

Frank Finkbeiner

Frank Finkbeiner

DEFENDANT/APPELLANT

SWORN TO AND SUBSCRIBED IN MY PRESENCE THIS 10 DAY OF APRIL, 2013.

Melissa Bowlus Alexander

Notary Public

MY COMMISSION EXPIRES

MO. 8 DAY 11 YEAR 2013

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BROWN COUNTY

COURT OF APPEALS
FEB 12 2013
BROWN COUNTY CLERK OF COURTS

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

FRANK FINKBEINER,

Defendant-Appellant.

CASE NO. CA2012-08-016
(Accelerated Calendar)

JUDGMENT ENTRY

CRIMINAL APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS
Case No. 2007-2104

{¶1} This is an accelerated appeal in which defendant-appellant, Frank Finkbeiner, appeals a decision of the Brown County Court of Common Pleas denying his motion to correct his sentence.

{¶2} Appellant's first assignment of error alleging he was charged and sentenced under the incorrect statute is overruled on the basis of the doctrine of res judicata and *State v. Fisher*, 128 Ohio St.3d 92, 2010-Ohio-6238. *See also State v. Bailey*, 12th Dist. No. CA2003-03-066, 2003-Ohio-5989; *State v. Banks*, 8th Dist. Nos. 83782 and 83783, 2004-Ohio-4478; and App.R. 9(B).

{¶3} Appellant's second assignment of error alleging ineffective assistance of trial counsel is overruled on the basis of *State v. Piesciuk*, 12th Dist. No. CA2007-04-

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086, 2008-Ohio-4054; *State v. McGraw*, 8th Dist. No. 97839, 2012-Ohio-3692; and the doctrine of res judicata.

{¶ 4} Appellant's third assignment of error challenging his seven-year prison term for rape is overruled on the basis of the doctrine of res judicata. *See Fisher*, 2010-Ohio-6238; *State v. Bradley*, 11th Dist. No. 2003-A-01012, 2006-Ohio-196. *See also* App.R. 9(B).

{¶ 5} Judgment affirmed.

{¶ 6} Pursuant to App.R. 11.1(E), this entry shall not be relied upon as authority and will not be published in any form. A certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

{¶ 7} Costs to be taxed in compliance with App.R. 24.

Robert P. Ringland, Presiding Judge

Stephen W. Powell, Judge

Michael E. Powell, Judge

1000043