

IN THE SUPREME COURT OF OHIO

State of Ohio,

Plaintiff-Appellee,

v.

Curtis Schleiger,

Defendant- Appellant.

* Case No. 13-0743
 * On Appeal from the Preble County
 * Court of Appeals, Twelfth
 * Appellate District
 *
 *
 * Court of Appeals
 * Case No.: CA 2011-11-012
 *

Appellee's Memorandum in Response to Appellant's Motion for Delayed Appeal

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RECEIVED
 MAY 20 2013
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 SUPREME COURT OF OHIO

FILED
 MAY 20 2013
 CLERK OF COURT
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Introduction and Background

Appellant, Curtis Schleiger, has failed to file his notice of appeal in a timely manner. As such, he has requested that he be granted permission to file a delayed appeal. Pursuant to S.Ct.Prac.R. 3.03 (B), this Court should not permit the delayed appeal. S.Ct.Prac.R. 3.03 (B) provides in pertinent part “***the Supreme Court will not extend the time for filing a document as prescribed by these rules or by court order, and the Clerk of the Supreme Court shall refuse to file requests for extension of time.” This Court should follow S.Ct.Prac.R. 3.03 (B) and deny Appellant’s request to file a delayed appeal.

Moreover, Appellant has not shown good cause or given adequate reasons for an allowance of a delayed appeal. See generally *State v. Williams*, 74 Ohio St.3d 454 (1996) and *State v. Gover*, 71 Ohio St.3d 577 (1995). Time limits are given for a reason, for the efficiency of the court and to provide for a level playing field for all parties. Counsel miscalculating a date does not rise to the level of good cause nor provide an adequate reason. Also, Appellant provides potential errors in his motion, none of which arise to the level of a substantial Constitutional question or of an item of public or general interest. Appellant has been before several courts now on the same issue relating back to his initial appeal of right.

Appellant’s recitation of the procedural history of his cases is accurate. He has been before the Twelfth District Court of Appeals on his initial appeal, denial of reconsideration of his initial appeal and then on this most recent appeal of his resentencing. He also attempted to prevail on a previous motion to certify conflict.

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Following each of his adverse decisions, he has filed appeals with this Court. This Court has declined jurisdiction. He filed an appeal with the United States Supreme Court. It also declined jurisdiction.

Reasons to Deny this Delayed Appeal

Appellant is asserting two new arguments. Both of these arguments are used essentially to collaterally attack the decisions of the trial court, appellate court, this court and the United States Supreme Court that he is barred from appealing issues that he should have brought up in his initial appeal. In his first new argument, he suggests that the Ohio Attorney General stated that it would waive *res judicata* as to Appellant's request for counsel for a new appeal of his underlying conviction and sentencing, based upon "this Court's clear language in *Fischer*." Motion of Appellant Curtis Schleiger for Delayed Appeal Pursuant to S.Ct.Prac.R. 7.01 (A)(4). Although the Ohio Attorney General in its brief did state that it would be willing to waive *res judicata* as to permitting appeal of his underlying conviction and sentencing, it did not do so on the authority of *State v. Fischer*, 2010-Ohio-6238, 128 Ohio St.3d 92. It did so under the belief that it in fact *could* waive *res judicata*.

On appeal of his resentencing, Appellant again asked to have his initial appeal reopened based upon the Ohio Attorney General's statement in its brief to the United States Supreme Court. However, questions arose as to whether this was permitted under *Fischer*. Both Appellant and the State submitted briefs to the appellate court regarding this issue. Based upon *Fischer* and *State v. Perry*, 10 Ohio St.2d 175

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(1967), the appellate court ruled that the State could not waive *res judicata*. The appellate court relied upon case law promulgated by this Court. This Court has found that where a defendant is sent back for resentencing, collateral issues of appeal are barred by *res judicata*. *Perry*, 10 Ohio St.2d 175, paragraph nine of the syllabus; *Fischer*, 2010-Ohio-6238, ¶30. This proposed issue that Appellant provides as one of his possible propositions of law is settled. It is not an item of great public or general interest or a substantial Constitutional question.

Appellant's second new issue relates to his statement that he did not knowingly and voluntarily waive his right to counsel at his resentencing hearing. Appellant points out that the appellate court noted that there is a conflict between the districts on the issue of whether a defendant is entitled to counsel for resentencing in order to properly relate to the defendant his post release control. This Court may deny the Appellant's request to file a delayed appeal, and still hear the potential conflict issue. See. S.Ct.Prac.R. 7.07. It is not necessary to grant the request to file a delayed appeal if the potential conflict is perfected.

Conclusion

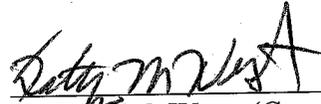
Appellant failed to file his appeal on time and now requests permission from this court to file a delayed appeal. Pursuant to S.Ct.Prac.R. 3.03 (B), this Court should not permit the delayed appeal. The rules provided by this Court are to afford a level playing field for all. The time limits are one of the rules, and therefore should be followed. Moreover, Appellants potential two issues do not provoke a substantial

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Constitutional question or issues of great general or public interest. Accordingly, this Court should deny Appellant's request.

Respectfully submitted,

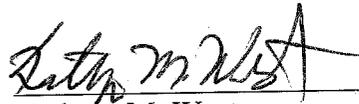
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CERTIFICATE OF SERVICE

A true and exact copy of the foregoing Brief for Appellee was delivered to the following Defendant/Appellant's counsel of record, Stephen P. Hardwick, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH, 43215 by regular U.S. Mail Service, postage pre-paid, this 20th day of May, 2013.



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