

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO
Appellee,

:

C.A Case No. 26891
SSUPREME COURT No. 13-0994

:

vs.

FILED
JUL 22 2013
CLERK OF COURT
SUPREME COURT OF OHIO

On Appeal from the Summit County
Court of Appeals Ninth Appellate
District.

MICHAEL CLAY
Appellant.

NOTICE THE COURT

Please find that Appellant Michael Clay is timely with his notice of appeal, and accompanying memorandum in support of jurisdiction to this Court. The purpose of this notice is to inform this Honorable Court of the dilemma, Appellant Michael Clay and the Ninth District Court of Appeals are in the middle of settling.

On Tuesday May 15th, the Ninth District Court of Appeals dismissed Mr. Clay's appeal for allegedly, filing the notice of appeal untimely. Wednesday May 21st, 2013, Mr. Clay filed a timely Motion for Reconsideration with the Ninth District Court of Appeals, providing prima facie evidence i.e. a Ohio Department of Rehabilitation and Correction financial affidavit. An affidavit which was attached to his motion to proceed in forma papuris, filed the same day as the notice of appeal. The affidavit reflects that it was notarized on Tuesday April 16th, 2013. And Mr. Clay asserted, that the notice of appeal, and the accompanying motions, left the institution by regular U.S. Mail, Wednesday May 17th, 2013 to Daniel M. Horrigan, Summit County Clerk of Court. However, the notice, and motions weren't certified on the record, (time stamped) until Tuesday April 23rd, 2013, one day passed the due date.

However, once again, as a result of negligent filing, on behalf of Daniel M. Horrigan, Clerk of Court,

RECEIVED
JUN 17 2013
CLERK OF COURT

RECEIVED
JUL 02 2013
CLERK OF COURT

RECEIVED
JUL 22 2013

Mr. Clay's motion for reconsideration was filed three days, beyond the due date, notwithstanding the

weekends, or the national holiday of memorial day. See attached filing, and institutional withdrawal slip reflecting when the Correctional Institution mailed the motion to the clerks' office. The deadline for the motion for reconsideration fell on Saturday May 25th 2013. But given that the due date was a weekend, the due date would have been that Monday, which was a national holiday. Therefore, the next available due date would have been Tuesday May 28th, 2013. Instead as a result of negligence, Daniel M. Horrigan filed the motion for reconsider, on Thursday May 30th, 2013. Which all inclusive of the weekends and holiday, amounts to an eight day untimely filing. Again providing evidence that the Clerk is indeed negligent, Mr. Clay attached to the motion for reconsider, the filing of the appeal brief, as well as the institutional withdrawal slip reflecting when the Correctional Institution mailed the brief to the clerks' office. See attached. The withdrawal slip reflects that the brief was sent by regular U.S. Mail, Friday May 10th, 2013. And was certified, (time stamped) on the record Tuesday May 14th, 2013, for a total, notwithstanding the weekend, two days. All inclusive of the weekends, it took four days.

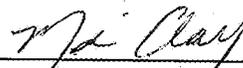
For Mr. Clay's Notice of appeal to take six days, all inclusive of the weekends, and eight days for his motion for reconsideration to be filed. In light of the four days for the brief to be filed, there is no other reasonable explanation, other then negligence on behalf of Daniel M. Horrigan, Summit County Clerk of Court.

As a result of the clerks negligence, Mr. Clay's motion is untimely, therefore, in light of S.Ct. Prac. R. 7.01, Institution of jurisdictional appeal, subsection, (5)(a) effect of a timely filed application for reconsideration with court of appeals. Mr. Clay's forty-five day time lined will not be tolled. And, to preserve his right to redress, Mr. Clay is filing his notice of appeal, and memorandum in support of jurisdiction now, so as to not divest this court of it's jurisdiction to review the appeal before it.

If this Court, construes this as a request for stay pending the outcome of the Ninth District Court of Appeals decision, then so be it. But if not, then Mr. Clay is timely, and would ask that this Court review

the matter before it, as it involves a substantial constitutional question, and a great and general interest to the public.

Respectfully submitted,



Michael Clay, A533-044

Defendant-Appellant, Pro Se.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice to
The Court was sent to the Summit County prosecutor's office. Locate
at 53 University Ave, Akron Ohio 44308 on this 18th day of July 2013.


Michael Clay, A533-044
Defendant Pro Se.

2013 APR 23 AM 9:24
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

26891

STATE OF OHIO
Plaintiff-Appellee,

C.A. CASE NO. _____
C.P. CASE NO. CR-06-12-4417

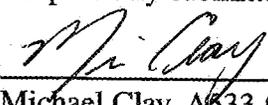
MICHAEL CLAY
Defendant-Appellant.

NOTICE OF APPEAL

COURT OF APPEALS
SUMMIT COUNTY
2013 APR 24 AM 9:08
CLERK OF COURTS

Notice is hereby given that Michael Clay, Defendant-Appellant, hereby appeals to the Court of Appeals for Summit County Ninth District, from the judgment of the trial court entered in this action on March 22, 2013. Pursuant to Appeal Rule 3, Michael Clay is timely in regards to this appeal.

Respectfully submitted,


Michael Clay, A533-044
Defendant-Appellant, Pro Se.
Mansfield Correctional Inst.
P.O. Box 788
Mansfield, Ohio 44901-0788

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT OF OHIO
SUMMIT COUNTY, OHIO

26891

C.A. CASE NO. _____
C.P. CASE NO. CR-06-12-441

APR 23 10 23 AM '13
STATE OF OHIO
Plaintiff-Appellée,
vs.

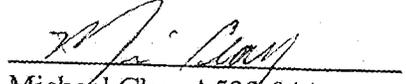
MICHAEL CLAY
Defendant-Appellant.

On Appeal from the Court of Common Pleas, Summit County, Ohio.

MOTION TO PROCEED IN FORMA PAUPERIS

Appellant, Michael Clay, moves this Court to dispense with docketing fees and request leave proceed in forma pauperis for the reasons stated in the attached affidavit. Mr. Clay is incarcerated. / sets forth the amount of available funds, if any, that Mr. Clay has on deposit with the institution required by Loc. R. 2(C). Therefore, Mr. Clay request that this motion be granted, as this is an appeal of right, and Appellant is without the funds to pay the prescribed fees. As well as any cost, and/or involved in this action.

Respectfully submitted,


Michael Clay, A533-044
Defendant-Appellant, Pro Se.
Mansfield Correctional Inst.
P.O. Box 788
Mansfield, Ohio 44901-0788

COURT OF APPEALS
SUMMIT COUNTY

2013 APR 24 AM 9:09

SUMMIT COUNTY
CLERK OF COURTS

Ohio Department of Rehabilitation and Correction

SECTION I - To be completed by cashier prior to this form being presented to the inmate for completion of SECTION II - Affidavit of Indigency.

I, Cris Nash, cashier at the Mansfield Correctional Institution certify that the following is a true and accurate reflection of the status of the account maintained at this institution for the benefit of:

Inmate Name: Michael Clay	Inmate Number: A-533044
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The Prison Litigation Reform Act (PLRA) requires that the time period to be considered is the preceeding six months. It also requires that, "...if financial activity is less than six months due to less than six months of incarceration, then note this fact on the statement. If lack of history is due to recent transfer, then obtain missing month-end reports from sending cashier to complete the six month period. The sending cashier must similarly certify the monthend reports."

The time period being reported below is: Six months Fewer than six months, beginning _____

The time period is fewer than six months, because: Period of Incarceration Transfer

Account Balance as of 04/12/2013: \$ 1.93
Total state pay credited for the report period; \$ 108.00
Average monthly state pay for the report period; \$ 18.00
Total funds received from all sources, excluding state pay, for the report period; \$ 437.85
Total amount spent in inmate's commissary during the same period; \$ 527.86

Signature of Cashier: <u>Cris Nash (14)</u>	Date: 04/12/2013
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AFFIDAVIT OF INDIGENCY

SECTION II - To be completed by inmate after cashier's statement is completed.

I, Michael Clay, being first duly sworn, says that he/she does not have sufficient funds to pay the filing fee and other costs of prosecuting this complaint against the State of Ohio, Department of Rehabilitation and Correction, in the Court of Claims of Ohio and submits the cashier's statement (Section I) in support of said allegation of indigency.

I hereby represent that the Information set forth in the cashier's statement concerning my financial condition is true and complete to the best of my knowledge and belief.

Signature of Inmate: <u>Michael Clay</u>	Inmate Number: A-533044
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Sworn to and subscribed to in my presence this 16TH day of APRIL 2013.



JOHN O. BABAJIDE
NOTARY PUBLIC,
STATE OF OHIO
My Commission Expires
May 31, 2016

Notary Public: <u>John O. Babajide</u>

Time Stamp & Return

IN THE COURT OF APPEALS
NINTH APPEALLATE DISTRICT
SUMMIT COUNTY, OHIO

COURT OF APPEALS
DANIEL M. HERRIGAN
2013 MAY 30 AM 10:02
SUMMIT COUNTY
CLERK OF COURTS

STATE OF OHIO
Plaintiff-Appellee,

C.A. CASE NO. 26891
C.P. CASE NO. CR-06-12-0117-18

vs.

MICHAEL CLAY
Defendant-Appellant.

DEFENDANT-APPELLANT'S MOTION FOR RECONSIDERATION

Now comes the Defendant-Appellant, Michael Clay, acting in Pro Se, Moves this Court pursuant to App.R.26(A)(1), to reconsider its prior decision to dismiss his appeal. On May 15th, 2013, this Court granted the state's motion to dismiss Mr. Clay's appeal, agreeing with the state's assertion that he was

Personal A/C Withdrawal
Check Out-Slip

Package Weight **23**
Dollars: _____ Cents: **56**

Institution: MANSFIELD CORRECTIONAL INST.		Date: 5/21/2013	
Name: DANIEL M. HERRIGAN (Clerk of Court) (Reconsideration)			
Address: 205 South High Street			
City: Akron	State: Ohio	Zip Code: 44308	

Postage Copies ID Misc. _____ Check-out CK # _____

The inmate's signature on this withdrawal request verifies that the information listed above has been read to or by the inmate and is correct. In the event of an error in the address which results in the return of this package, the inmate shall assume financial responsibility.

Inmate's Signature: <i>Michael Clay</i>	Number: 533-044	Block & Cell Number: 2C 119
Approved By: <i>EC</i>	Witnessed:	

Ship VIA: Regular U.S. Mail	Date Processed: PAID MAY 22 2013
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Time Stamp & Return

COUNT OF APPEALS
DANIEL M. HERRIGAN
2013 MAY 14 AM 8:52
SUMMIT COUNTY
OHIO OF COURTS

IN THE COURT OF APPEALS
NINTH APPELLATE DISTRICT
SUMMIT COUNTY, OHIO

STATE OF OHIO
Appellee,

C.A Case No. 26891

vs.

C.P Case No. CR-06-12-4417

MICHAEL CLAY
Appellant.

DEFENDANT-APPELLANT MICHAEL CLAY'S BRIEF

Michael Clay, A533-044

Personal A/C Withdrawal
Check Out-Slip

size wt. 12.5oz.
Dollars: 3 Cents: 32

Institution: MANSFIELD CORRECTIONAL INST.		Date: 5/9/2013	
Name: DANIEL M. HERRIGAN (Clerk of Court)			
Address: 205 South High Street			
City: Akron	State: Ohio	Zip Code: 44308	

Postage Copies ID Misc. _____ Check-out CK # _____

The inmate's signature on this withdrawal request verifies that the information listed above has been read to or by the inmate and is correct. In the event of an error in the address which results in the return of this package, the inmate shall assume financial responsibility.

Inmate's Signature: <i>Michael Clay</i>	Number: 533-044	Block & Cell Number: 2C 119
Approved By: <i>EC</i>	Witnessed:	

Ship VIA: Regular U.S. Mail	Date Processed: PAID MAY 10 2013
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