

IN THE SUPREME COURT OF OHIO
2015

STATE OF OHIO,

Case No. 15-1024

Plaintiff-Appellee,

-vs-

On Appeal from the
Franklin County Court
of Appeals, Tenth
Appellate District

(S.S., Sr.),

Defendant-Appellant

Court of Appeals
Case No. 13AP-1060

**MEMORANDUM OF APPELLEE STATE OF OHIO OPPOSING MOTION
FOR DELAYED APPEAL**

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and

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Pro se

**MEMORANDUM OF APPELLEE STATE OF OHIO OPPOSING MOTION
FOR DELAYED APPEAL**

The State opposes defendant's motion for delayed appeal. Defendant is seeking to pursue a delayed appeal from the Tenth District's December 4, 2014, decision and December 9, 2014 judgment entry affirming his conviction. Defendant's appeal was due in this Court by January 23, 2015. Defendant's motion for delayed appeal is therefore almost five months past the deadline.

Defendant blames the delay on the fact that he is incarcerated, his family has cut contact with him, he has no money, and he did not receive his mail until after the time to file his appeal had passed. As this Court has stated in another context, claims of indigency and/or pro se status do not qualify as a good excuse for untimely filing. *State v. Reddick*, 72 Ohio St.3d 88, 91, 647 N.E.2d 784 (1995).

Ignorance of the law also is not "good cause." *State v. Forney*, 72 Ohio St.3d 563, 564, 651 N.E.2d 981 (1995); *State v. Franklin*, 72 Ohio St.3d 372, 373, 650 N.E.2d 447 (1995). This Court has affirmed that "lack of effort or imagination, and ignorance of the law *** do not automatically establish good cause for failure to seek timely relief." *State v. Reddick*, 75 Ohio St.3d 88, 91 (1995) (affirming denial of application to reopen pursuant to App.R.26). Defendants are expected to meet filing deadlines, even if they must file the document themselves. See, e.g., *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶¶ 8-10; *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970, ¶ 7.

Defendant fails to say when he received his mail notifying him of the Tenth

District's decision. "Good cause can excuse the lack of a filing only while it exists, not for an indefinite period." *State v. Davis*, 86 Ohio St.3d 212, 214, 714 N.E.2d 384 (1999), quoting *State v. Fox*, 83 Ohio St.3d 514, 515, 700 N.E.2d 1253 (1998). More than five months have passed since the appeal was due to this Court. Defendant does claim that the public defender's office sent him a package on March 24, 2015. At that time defendant's appeal was already two months overdue. It then took defendant almost three months to actually file this motion for a delayed appeal after receiving that package.

In all respects, the motion for delayed appeal lacks merit and should be denied.

Respectfully submitted,

/s/ Valerie B. Swanson

VALERIE B. SWANSON 0089124

(Counsel of Record)

Assistant Prosecuting Attorney

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent by regular U.S. Mail on this 24th day of June, 2015, to Steven Solis, #695-908, Southeastern Correctional Institution, P.O. Box 59, 16759 Snakehollow Rd., Nelsonville, Ohio 45764.

/s/ Valerie B. Swanson

VALERIE B. SWANSON

Assistant Prosecuting Attorney