

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE EX REL. LIONEL HARRIS,
Petitioner/ Appellant

:

On Appeal From the Twelfth
Appellate District Court of Appeals
Madison County, Ohio

v.

:

C.A. Case No. CA 2015-03-012

RHONDA C. RICHARD, Warden
Respondent/ Appellee

:

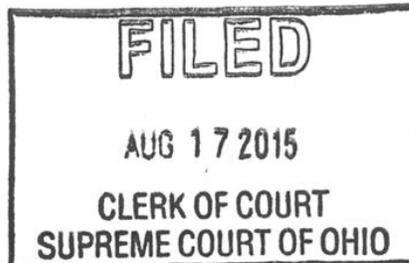
Hamilton County Court of Common
Pleas Case No. B916789

Case No. 2015-1028

MOTION FOR RECONSIDERATION OF SUA SPONTE DISMISSAL

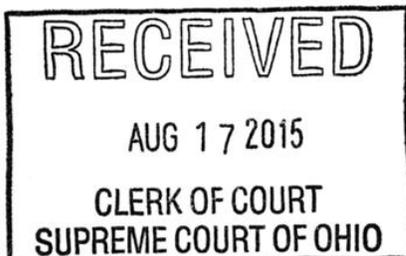
Lionel Harris
#252066
Madison Correctional Inst.
P.O. Box 740
London, Ohio 43140-0740

Petitioner/ Appellant, pro se



Hilda Rosenberg
Assistant Attorney General
Criminal Justice Section
441 Vine Street
1600 Carew Tower
Cincinnati, Ohio
(513) 852-1564

Counsel for Respondent/ Appellee



MEMORANDUM IN SUPPORT

Appellant, Lionel Harris, is incarcerated at the Madison Correctional Institution. Appellant had 40 days to file the merit brief for his appeal of right in case no. 2015-1028. His filing deadline for his brief was on 8/9/2015. But since the 9th fell on a Sunday, his brief was due on the 10th of August, 2015. Appellant turned over his brief to the mailroom on the afternoon of August 4th 2015. *Six days prior to his due date.* As evidence of this fact, Appellant attaches his Institution's "Cash Slip" that is issued when an inmate has to pay for extra postage when mailing out large envelopes. Appellant's cash slip clearly states in the upper right hand corner that it was turned over to the MaCI institutional mail on 8/5/15. But in the lower left hand corner of the document, it shows that it was not mailed out until the 8/10/15! Therefore, the brief arrived at the Supreme Court on 8/11/15, *one day late.*

Appellant asserts that it was not his fault that his brief was filed one day late. It was Madison Correctional Institution's fault and their fault alone. Appellant asserts that six days ahead of the deadline is a reasonable amount of time to attempt to mail his brief to this court and Appellant further asserts that he had every reasonable expectation to believe that MaCI would mail out his brief within 24 hours because that is the policy and more importantly, that is exactly what they have routinely done prior. Evidence of this fact can be demonstrated through the attached copies of Appellant's previous legal mail cash slips. A simple inspection of the attached cash slips shows that every legal mail cash slip that appellant has turned in previously for the past year have all been processed within one day! As a result, it was reasonable to expect that compliance with the rule would continue.

Appellant also relies on this court's previous ruling in *Hawkins v. Marion Correctional Institute* (1986), 28 Ohio St. 3d 4. In that case, the court ruled that it was an abuse of discretion for the appellate court to dismiss an appeal, pursuant to App. R. 18(A), when appellant's *brief* was filed one day late. *DeHart v. Aetna Life Ins. Co., supra*, at 192; *In re Wonderly* (1981), 67 Ohio St. 2d 178, 187 [21 O.O.3d

111 "A court of appeals abuses its discretion when, after dismissing a case, *sua sponte*, for a minor, technical, correctable, inadvertent violation of a local rule, it refuses to reinstate the case when: (1) the mistake was made in good faith and not as part of a continuing course of conduct for the purpose of delay, (2) neither the opposing party nor the court is prejudiced by the error, (3) dismissal is a sanction that is disproportionate to the nature of the mistake, (4) the client will be unfairly punished for the fault of his counsel, and (5) dismissal frustrates the prevailing policy of deciding cases on the merits."

CONCLUSION

Appellant believed its brief was timely filed in this court. He made a good faith effort to comply with the rules yet due to circumstances outside of his control, his brief was mistakenly or deliberately withheld for approximately six days by this institution. Neither the opposing party nor the court was prejudiced since appellee's briefing time did not commence until appellant's brief was filed and the court would not have considered the case until after all the briefs were filed. Dismissal was clearly disproportionate to any error appellant may have made since the date on which Appellant turned the brief over to the institution's mailroom was six days prior to the filing deadline. The delay was not caused by lack of diligence or disregard for court proceeding. Appellant will be unfairly prejudiced if the dismissal is allowed to stand, and the alleged tardiness in filing would have had *no* effect on the substantive issues or the course of the appeal. Appellant respectfully requests that his appeal be allowed to go forward and be heard by this court.

Respectfully submitted,

Lionel Harris 8/13/15

Lionel Harris pro se

#252066

P.O. Box 740

London, Ohio 43140-0740

CERTIFICATE OF SERVICE

I, Lionel Harris, do hereby certify that a true and accurate copy of the foregoing Motion for Reconsideration of sua sponte Dismissal was served upon the Assistant Ohio Attorney General, Hilda Rosenberg, by regular U.S. Mail at her office at 441 Vine Street, 1600 Carew Tower, Cincinnati, Ohio 45202.

Lionel Harris 8/13/15
Lionel Harris, pro se

Personal A/C Withdrawal Check Out-Slip

Dollars: 5 Cents: 75

Institution: <u>MA.C.I.</u>		Date: <u>8/5/15</u>	
Name: <u>Office of the Clerk, Supreme Court of Ohio</u>			
Address: <u>65 South Front Street, 8th Fl.</u>			
City: <u>Columbus,</u>	State: <u>OHio</u>	Zip Code: <u>43215-3431</u>	

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: <u>Lionel Harris</u>	Number: <u>252-066</u>	Block & Cell Number: <u>WA247L</u>
Approved By:	Witnessed: <u>Randall Hawk</u>	

Ship VIA: <u>8-10-15</u> ^{SW}	Date Processed: <u>8-7-15</u> ^{RL}
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DRC 1004 (Rev. 3/01) DISTRIBUTION: WHITE - Cashier CANARY - Inmate Pink- _____ ACA 4046

Personal A/C Withdrawal Check Out-Slip

Dollars: 2 Cents: 45

Institution: <u>MACI</u>		Date: <u>5-21-15</u>	
Name: <u>Clerk of Courts 12th Appellate Dist.</u>			
Address: <u>1 North MAIN ST.</u>			
City: <u>London</u>	State: <u>OHIO</u>	Zip Code: <u>43140-1068</u>	

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: <u>Lionel Harris</u>	Number: <u>252-066</u>	Block & Cell Number: <u>WA 247</u>
Approved By:	Witnessed: <u>[Signature]</u>	

Ship VIA: <u>5-22-15</u>	Date Processed: <u>5/21/15</u>
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DRC 1004 (Rev. 3/01) DISTRIBUTION: WHITE - Cashier CANARY- Inmate Pink- ACA 4046

Personal A/C Withdrawal Check Out-Slip

Dollars: 1 Cents: 42

Institution: <u>MACI</u>		Date: <u>6/17/15</u>	
Name: <u>Office of the Clerk, Supreme Court of Ohio</u>			
Address: <u>65 South Front Street, 8th Fl.</u>			
City: <u>Columbus</u>	State: <u>OHIO</u>	Zip Code: <u>43215-3431</u>	

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: <u>Lionel Harris</u>	Number: <u>252-066</u>	Block & Cell Number: <u>WA 247</u>
Approved By:	Witnessed: <u>J.G. [Signature]</u>	

Ship VIA: <u>6-18-15</u>	Date Processed: <u>6/17/15</u>
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DRC 1004 (Rev. 3/01) DISTRIBUTION: WHITE - Cashier CANARY- Inmate Pink- ACA 4046