

IN THE SUPREME COURT OF OHIO

State of Ohio,	:	Case No. 2015-1568
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	
	:	
Jason Raphael,	:	On APPEAL from the Warren
	:	County Court of Appeals
and	:	Twelfth Appellate District
	:	
Gregory Clayton,	:	C.A. Case Nos. CA2014-11-138
	:	CA2014-11-139
Defendants-Appellants.	:	

MOTION FOR RECONSIDERATION OF DEFENDANTS-APPELLANTS

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Jason Raphael & Gregory Clayton

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MOTION FOR RECONSIDERATION OF DEFENDANTS-APPELLANTS

Pursuant to S.Ct.Prac.R. 18.02(B)(2), Defendants-Appellants respectfully request that this Court reconsider its decision journalized March 30, 2016 in this case. Specifically, Defendants-Appellants ask this Court to permit the Defendants-Appellants an additional twenty days for the filing of the merit brief in the within cause from the date the Court acts on this Motion for Reconsideration. The Defendants-Appellants and their counsel request the Court to find that the failure to timely file the Defendants-Appellants' brief was due to inadvertence of counsel and not through any actions of the Defendants-Appellants. Defendants-Appellants present the following Memorandum in Support of their request that this Court reconsider its determination dismissing the appeal.

Respectfully submitted,

/s/: Robert G. Kelly

Robert G. Kelly #0002167

/s/: Edward T. Kathman

Edward T. Kathman #005544

Counsel for Defendants-Appellants

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Memorandum in Support of Reconsideration

Counsel for the Defendants-Appellants have conferred on this case on numerous occasions concerning the filing of the merit brief in the within cause. Initial correspondence sent to Robert G. Kelly, Counsel for Raphael, was received indicating the Court's acceptance of this case. On February 17, 2016 Kelly received the notice the record was filed in the within cause and in reviewing the notice from the Court was awaiting an additional document for the briefing schedule in the within matter.

Counsel for Defendant-Appellant Raphael employs a daily mail log of all documents that are received at his office and the administrative assistant marks all deadlines in the attorney's calendar and Kelly also reviews all correspondence to check for deadlines. In the instant case the deadline was not apparent from the communication and therefor no entry was made to ensure the timely filing of the Defendants-Appellants' brief. Counsel for Raphael has approximately 98% of his appeals in the First District Court of Appeals and a deadline for the filing of a brief has never passed without a brief being filed or dismissed. Further, counsel for the Defendants-Appellants have appeared at all court hearings in this matter.

Counsel for Defendant-Appellant Clayton has not received any communication from the Ohio Supreme Court concerning this case. Counsel for Clayton has inspected the online filings and he anticipated a scheduling order from the Ohio Supreme Court. Counsel for Defendant-Appellant Clayton is not a regular practitioner before the Ohio Supreme Court.

In addition, the Court has accepted this case after the filing of the Memorandum in Support of Jurisdiction. This case merits the Court's attention due to the recent U.S. Supreme Court decision in *Rodriguez v. United States*, ___U.S.____, 135 S.Ct. 1609 (2015). In *Rodriguez*, the U.S. Supreme Court made it clear that "absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates the Constitution's shield against unreasonable searches and seizures. The dismissal of the appeal will result in the Court of Appeals ruling which the Defendants-Appellants claim conflicts with *Rodriguez* to remain the law of the case. The Defendants-Appellants are charged with serious felonies and issues related to their denial of their constitutional rights should not hinge on the failure to correctly docket the deadline for a brief when their freedom is at issue. The Defendants-Appellants should not be penalized and have the Court deny the Defendants-Appellants the opportunity to present their appeal.

Counsel for Defendant-Appellant Raphael has conferred with counsel for Plaintiff-Appellee (Kathryn Horvath) on March 30, 2016 concerning this Motion for Reconsideration and was advised by opposing counsel she is not taking a position in favor or against this motion for reconsideration.

Conclusion

Counsel for Defendants-Appellants respectfully request the Court to vacate the March 30, 2016 decision denying the appeal for want of prosecution and request the Court to grant the Defendants-Appellants twenty days from the date of the ruling on the Motion to Reconsider to file their brief in the within cause for the reasons set forth herein.

Respectfully submitted,

/s/: Robert G. Kelly

Robert G. Kelly #0002167

/s/: Edward T. Kathman

Edward T. Kathman #005544

Counsel for Defendants-Appellants

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Certificate of Service

I hereby certify that a copy of the foregoing MOTION FOR RECONSIDERATION OF DEFENDANTS-APPELLANTS was forwarded by regular U.S. Mail to David P. Fornshell, Prosecuting Attorney, and Kathryn Horvath, Assistant Prosecuting Attorney, Warren County Prosecutor's Office, 500 Justice Drive, Lebanon, Ohio 45036, this 31st day of March, 2016.

/s/: Robert G. Kelly

Robert G. Kelly #0002167

/s/: Edward T. Kathman

Edward T. Kathman #005544