

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	No. 14AP-770
	:	(C.P.C. No. 13CR-6236)
v.	:	
	:	(REGULAR CALENDAR)
Quanique Draughn,	:	
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on April 23, 2015

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*Ron O'Brien*, Prosecuting Attorney, and *Sheryl L. Prichard*,  
for appellee.

*Timothy Young*, Ohio Public Defender, and *Peter Galyardt*,  
for appellant.

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APPEAL from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Defendant-appellant, Quanique Draughn, appeals from an entry of the Franklin County Court of Common Pleas denying his motion for the appointment of appellate counsel. For the following reasons, we reverse.

**I. Facts and Procedural History**

{¶ 2} By indictment filed November 22, 2013, plaintiff-appellee, State of Ohio, charged Draughn with two counts of robbery, in violation of R.C. 2911.02, felonies of the second degree; two counts of robbery, in violation of R.C. 2911.02, felonies of the third degree; and one count of kidnapping, in violation of R.C. 2905.01, a felony of the first degree. Initially, Draughn entered a plea of not guilty.

{¶ 3} On June 5, 2014, Draughn withdrew his not guilty plea and instead entered a plea of guilty to one count of second-degree felony robbery and one count of first-degree

felony kidnapping. The trial court dismissed the three remaining charges at the state's request. Following a June 27, 2014 sentencing hearing, the trial court sentenced Draughn to an aggregate sentence of 13 years imprisonment: 5 years on the robbery charge, 7 years on the kidnapping charge, and 1 year for violating post-release control in case No. 11-CR-5318, all to be served consecutively to each other. The trial court journalized Draughn's convictions and sentence in a June 30, 2014 judgment entry.

{¶ 4} Draughn timely appealed, in case No. 14AP-598, from the judgment entry of conviction on July 29, 2014. Subsequently, on August 8, 2014, Draughn filed a motion for appointment of appellate counsel. In an August 28, 2014 entry, the trial court denied Draughn's motion for appointment of appellate counsel, finding "there is no right to the appointment of appellate counsel or payment of the transcript at the State's expense."

{¶ 5} On September 11, 2014, following the trial court's denial of his motion for appointment of appellate counsel, Draughn filed with this court a motion for appointment of counsel and a motion for extension of time to file his brief. That same day however, this court issued a journal entry of dismissal in case No. 14AP-598, sua sponte dismissing Draughn's appeal for failure to file a brief within the time required by App.R. 18(C) and failing to respond to notification from the court that the time for filing a brief had expired. Draughn now timely appeals from the trial court's entry denying his motion for appointment of appellate counsel.

## **II. Assignment of Error**

{¶ 6} Draughn assigns a single assignment of error for our review:

The trial court erred and violated Quanique Draughn's rights to due process, equal protection, and the effective assistance of counsel when it denied his timely request for appellate counsel. Fifth, Sixth, and Fourteenth Amendments, United States Constitution; Sections 10 and 16, Article I, and Section 3, Article IV, Ohio Constitution.

## **III. Discussion**

{¶ 7} In his sole assignment of error, Draughn argues the trial court erred when it denied his motion for appointment of appellate counsel and that this error ultimately resulted in the dismissal of his direct appeal. The state concedes it was error for the trial court to deny Draughn's motion for appointment of appellate counsel. We agree.

{¶ 8} "A convicted defendant has a constitutional right to counsel on a direct appeal to the Court of Appeals from his judgment of conviction." *State v. Catlino*, 10 Ohio St.2d 183 (1967), syllabus, following *Douglas v. California*, 372 U.S. 353 (1963). Both Crim.R. 32 and 44 also provide for the right to counsel on direct appeal. Crim.R. 32(B) provides, in pertinent part, that if a defendant has a right to appeal, the court shall notify the defendant "[t]hat if the defendant is unable to obtain counsel for an appeal, counsel will be appointed without cost." Crim.R. 32(B)(3)(b). Similarly, Crim.R. 44(A) provides that "[w]here a defendant charged with a serious offense is unable to obtain counsel, counsel shall be assigned to represent him at every stage of the proceedings from his initial appearance before a court through appeal as of right, unless the defendant, after being fully advised of his right to assigned counsel, knowingly, intelligently, and voluntarily waives his right to counsel."

{¶ 9} Here, the trial court concluded there was no right to appointment of counsel. This conclusion was in error. Draughn's guilty plea form clearly stated: "I understand that I can appeal as a matter of right from my plea and sentence within thirty days of the filing of my judgment of conviction." Further, as outlined above, Draughn was entitled to the appointment of appellate counsel to represent him during his direct appeal. Crim.R. 44(A). Therefore, we agree with both Draughn and the state that the trial court erred when it denied Draughn's motion for appointment of appellate counsel, and we sustain Draughn's sole assignment of error.

#### **IV. Disposition**

{¶ 10} Based on the forgoing reasons, the trial court erred when it denied Draughn's motion for appointment of appellate counsel. Having sustained Draughn's sole assignment of error, we reverse the entry of the Franklin County Court of Common Pleas and remand the matter to that court to appoint appellate counsel so that Draughn may pursue his direct appeal pursuant to App.R. 5(A).

*Judgment reversed;  
cause remanded with instructions.*

TYACK and SADLER, JJ., concur.

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