

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio

Court of Appeals No. E-09-027

Appellee

Trial Court No. 2008-CR-352

v.

Ronald J. Dority

DECISION AND JUDGMENT

Appellant

Decided: April 6, 2010

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Mary Ann Barylski, Assistant Prosecuting Attorney, for appellee.

Ronald J. Dority, pro se.

* * * * *

PER CURIAM.

{¶ 1} Appellant, Ronald J. Dority, has filed an application for delayed reopening of his appeal from his conviction for felonious assault, violation of a temporary

protection order, and kidnapping. Dority had pleaded guilty to the charges. For the reasons that follow, we grant appellant's motion.

{¶ 2} On May 19, 2009, appellant filed an appeal of his conviction. On September 17, 2009, appellant's appointed counsel filed a NOTICE OF VOLUNTARY DISMISSAL stating that based on two Ohio Supreme Court cases and one case from this court, appellant's proposed assignments of error are moot. We dismissed the appeal on September 21, 2009.

{¶ 3} According to statements in his application for delayed reopening, appellant did not learn of the dismissal until after the expiration of the 90 days provided by App.R. 26(B) for filing an application for reopening. Appellant filed his application for delayed reopening on March 5, 2010. The state of Ohio filed a response conceding that Dority's appointed counsel should not have dismissed his client's appeal.

{¶ 4} App.R. 26(B) provides, in pertinent part:

{¶ 5} "(1) A defendant in a criminal case may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel. An application for reopening shall be filed in the court of appeals where the appeal was decided within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time.

{¶ 6} "* * *.

{¶ 7} "(5) An application for reopening shall be granted if there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal.

{¶ 8} "* * *."

{¶ 9} See, also, *State v. Murnahan* (1992), 63 Ohio St.3d 60, paragraph three of the syllabus.

{¶ 10} In the instant case, where appellate counsel voluntarily dismissed appellant's appeal without his client's knowledge, we find that a genuine issue exists as to whether appellant was denied effective assistance of counsel. We also find that appellant has shown good cause for his untimely filing.

{¶ 11} Upon due consideration, we grant appellant's motion for delayed reopening and motion for appointment of counsel. Dennis Levin, 5910 Landerbrook Drive, #200, Mayfield Heights, Ohio 44124 is appointed to represent appellant in this appeal and shall file a brief on appellant's behalf within 30 days of the date of this order.

MOTIONS GRANTED.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.