

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

-vs-

Michael T Morris
Defendant-Appellant

: 18-0029

: Court of Appeals Case No.

: 17 AP-609

: On Appeal from the

: County Court of Common Pleas

: Court of Common Pleas Case

: Number 16 CR 3655

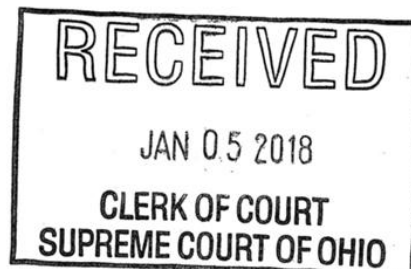
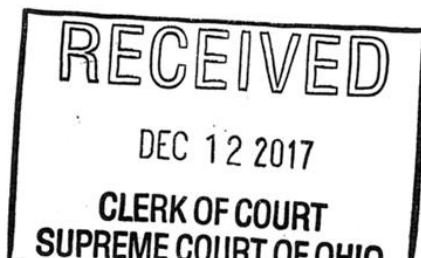
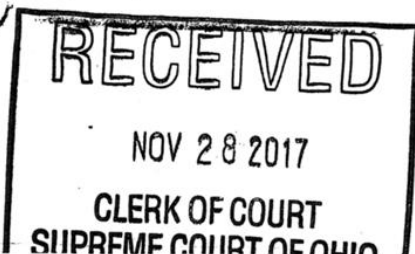
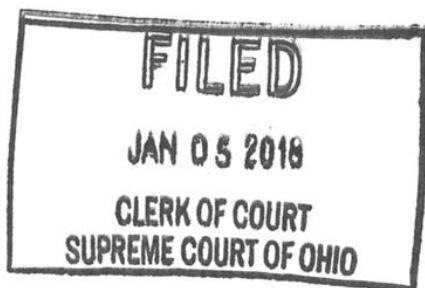
NOTICE OF APPEAL

Defendant-Appellant, Michael T Morris, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Franklin County Court of Appeals, Tenth Appellate District, entered in Court of Appeals case number 17 AP-609 on the day of Aug-19, 2017.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully Submitted,

Michael T Morris
Defendant/Appellant, Pro Se



IN THE SUPREME COURT OF OHIO

STATE OF OHIO,
Plaintiff-Appellee,

Vs
Michael T Morris
Defendant-Appellant

)
) On appeal from the Franklin
) County, Court of Appeals, Tenth
) Appellate District
)
) Court of Appeals Case No.
) 17 AP - 609

MOTION TO FILE DELAYED APPEAL

Michael T Morris respectfully moves the Court pursuant to Ohio Supreme Court Rule II, Section 2 (a) (4) (A) for leave to file a delayed appeal. This case involves a felony and more that forty five (45) days has passed since the Court of Appeals decision was filed in this case. A memorandum in support is attached.

Michael T Morris
Defendant-Appellant, pro se

Michael T Morris #235354
Name and Number

Noble Correctional
Institution

15708 McCownsville Rd
Address

Caldwell, Ohio, 43724
City, State, Zip

MEMORANDUM

Appellant was sentenced May 11th, 2017 and was sent to the Correctional Reception Center. Appellants attorney was supposed to file an appeal after trial on his behalf. Appellants attorney did not contact him until August 23rd, 2017, sending Appellant the discovery and other vital paperwork that should have been given him. Appellant immediately filed for a delayed appeal to the Court of Appeals. Subsequently, the Appeals Court refused to hear Appellants motion for delayed appeal. Appellants motion to the Ohio Supreme Court was timely, but was deficient without the Courts journal entry.

Clerk of Courts sent Appellants motion back to be corrected, and time expired to be timely. Appellant asks this Honorable Court to not hold him to the strict standards as if he was an attorney. Appellant had the necessary papers to send back but had to wait for the institution to verify money in accounts and other steps to send out legal mail. Appellant believes that if not for these delays his motion would have been timely, and respectfully asks this Honorable Court to grant motion for delayed appeal.



DEBORAH L. KING
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES

2-13-19

Michael T Morris

Deborah L King

Notary

12/29/17

A 1.

EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A
SUBSTANTIAL CONSTITUTIONAL QUESTION

This case is of great general interest and involves a substantial Constitution question because of prosecutorial misconduct and ineffective assistance of counsel. The evidence submitted in this case does not add up to the charge on the indictment. Appellant was charged with RAPE R.C. 2907.02, which implies that Appellant engaged in sexual conduct with another and purposely compelled the other person to submit by (FORCE) or (threat of force). Without force or threat of force the crime/charge is not RAPE R.C. 2907.02 because it lacks the elements. In this case victim gave several statements and an interview with the Child Assessment Center. At no time during these statements and interview given by the victim was there any mention of force or threat of force or intimidation. Prosecutor failed to amend charges and continued to trial knowing that the elements to convict on these charges was not there. Appellant was denied equal protection of law and due process by the prosecutor in this case.

Pg. 2.

Also, Counsel WAS AWARE of all these circumstances of this case, and failed to advise Appellant of the deficient charges. Counsel ~~read~~ was supposed to read the Child Assessment Center interview. Counsel also sat through (3) days of trial and heard testimony from victim. After (3) days of trial Counsel advised Appellant to take a plea deal on (3) Counts of Rape R.C. 2907.02 to be served consecutive offered by the prosecutor. After (3) days of trial testimony Counsel and prosecutor knew that the charge was not valid because the evidence was not there to prove the charge. The prosecutor could not prove his case therefore, Counsel was ineffective for advising Appellant to plead instead of continuing on with the trial. Appellant would have been found not guilty of the charge because the elements to prove Rape R.C. 2907.02 was not there. Appellant believes that because of the prosecutorial misconduct and the ineffective assistance of Counsel this case is of public or great general interest and

involves a substantial constitutional question. Appellant believes that counsel deliberately didn't file a timely appeal so this case would not be reviewed.

Appellant's trial was May 11th, 2017, counsel did not supply Appellant with the discovery and the paperwork from the case until September 21st, 2017. (letter enclosed)

Appellant asks this Honorable Court to not hold him accountable for the ineffectiveness of counsel and grant this delayed appeal. Appellant also states that appeal was timely but need journal entry attached and was returned by the clerk. Appellant believes that if not for delays by the institution, verifying funds and other steps to send out legal mail, his motion would have been timely.



DEBORAH L. KING
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES

2-13-19

Michael T Morris

Deborah L King

Notary

12/29/17

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this motion for Delayed Appeal, was sent by regular U.S. Mail, to the office of the

Franklin County Prosecutor at 373 S. High St. Fl.^{74th}
on this 3rd day of January, 2018 Columbus, OHIO 43215

The Supreme Court of Ohio

OFFICE OF THE CLERK

65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

CHIEF JUSTICE
MAUREEN O'CONNOR

CLERK OF THE COURT
SANDRA H. GROSKO

JUSTICES
TERRENCE O'DONNELL
SHARON L. KENNEDY
JUDITH L. FRENCH
WILLIAM M. O'NEILL
PATRICK F. FISCHER
R. PATRICK DEWINE

TELEPHONE 614.387.9530
FACSIMILE 614.387.9539
www.supremecourt.ohio.gov

December 13, 2017

Michael T. Morris #735-254
Noble Correctional Institution
15708 McConnelsville Rd
Caldwell, OH 43724

Dear Mr. Morris:

The enclosed documents were not filed because they do not meet the requirements of the Rules of Practice of the Supreme Court of Ohio. Specifically, your appeal is untimely. Pursuant to Rule 7.01(A)(1), your notice of appeal and memorandum in support of jurisdiction are due within 45 days from the date of the court of appeals judgment being appealed. An appeal of a October 19, 2017 decision was due in the clerk's office on or before December 4, 2017. Your documents were received on December 12, 2017. The clerk's office is not permitted to file untimely documents and motions to waive this rule are prohibited pursuant to Rule 3.02(B).

If you are appealing a felony conviction, it is still possible to file a delayed appeal by submitting all of the following: A notice of appeal listing the date of the court of appeals judgment being appealed and that the case involves a felony; a motion for delayed appeal which states the date of the entry of the judgment being appealed, gives adequate reasons for the delay, and contains a notarized affidavit in support of the facts set forth in your motion; a complete copy of the court of appeals' decision being appealed, and a notarized affidavit of indigence meeting the court's requirements (or an entry appointing you counsel or the \$100 filing fee).

Please refer to the Rules of Practice and Guide to Filing previously sent to you for further guidance. Information on delayed appeals begins on page 20 of the guide.

Sincerely,
Clerk's Office

Enclosures

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
Plaintiff-Appellee, :
v. : No. 17AP-609
(C.P.C. No. 16CR-3655)
Michael T. Morris, : (REGULAR CALENDAR)
Defendant-Appellant. :

JUDGMENT ENTRY

For the reasons stated in the memorandum decision of this court rendered herein on October 19, 2017, it is the judgment and order of this court that appellant's motion for leave to file a delayed appeal, motion for appointment of counsel, and motion for preparation of a complete transcript of proceedings at state expense are denied. Costs shall be assessed against appellant.

SADLER, J., TYACK, P.J., and HORTON, J.

/S/ JUDGE

Tenth District Court of Appeals

Date: 10-19-2017
Case Title: STATE OF OHIO -VS- MICHAEL T MORRIS
Case Number: 17AP000609
Type: JEJ - JUDGMENT ENTRY

So Ordered



/s/ Judge Lisa L. Sadler

Court Disposition

Case Number: 17AP000609

Case Style: STATE OF OHIO -VS- MICHAEL T MORRIS

Motion Tie Off Information:

1. Motion CMS Document Id: 17AP0006092017-08-2499890000
Document Title: 08-24-2017-MOTION FOR TRANSCRIPT AT
STATE EXPENSE - MICHAEL T. MORRIS
Disposition: 3200

2. Motion CMS Document Id: 17AP0006092017-08-2499900000
Document Title: 08-24-2017-MOTION FOR APPOINTMENT OF
COUNSEL - MICHAEL T. MORRIS
Disposition: 3200

3. Motion CMS Document Id: 17AP0006092017-08-2499910000
Document Title: 08-24-2017-MOTION TO DELAY APPEAL
PURSUANT TO 5A - MICHAEL T. MORRIS
Disposition: 3200

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio, :
 :
Plaintiff-Appellee, :
 :
v. : No. 17AP-609
 : (C.P.C. No. 16CR-3655)
Michael T. Morris, : (REGULAR CALENDAR)
 :
Defendant-Appellant. :

MEMORANDUM DECISION

Rendered on October 19, 2017

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Michael T. Morris, pro se.

ON MOTIONS

SADLER, J.

{¶ 1} On August 24, 2017, defendant-appellant, Michael T. Morris, pro se, filed a motion for leave to file a delayed appeal, pursuant to App.R. 5(A), from the May 12, 2017 judgment of the Franklin County Court of Common Pleas, a motion for appointment of counsel, and a motion for preparation of a complete transcript of proceedings at state expense. Plaintiff-appellee, State of Ohio, has filed a memorandum in opposition to the motion for leave to file a delayed appeal.

{¶ 2} App.R. 5(A) permits a defendant in a criminal case to file a motion for leave to appeal after the expiration of the 30-day period provided by App.R. 4(A) for the filing of a notice of appeal as of right. The movant bears the burden of " 'demonstrating a reasonable explanation of the basis for failure to perfect a timely appeal.' " *State v. Morris*, 10th Dist. No. 05AP-1139, 2005-Ohio-6479, ¶ 3, quoting *State v. Cromlish*, 10th

Dist. No. 94APA06-855 (Sept. 1, 1994). "The decision to grant or deny a motion for leave to appeal rests within the sound discretion of the court of appeals." *Morris* at ¶ 3, citing *State v. Walden*, 10th Dist. No. 05AP-532, 2005-Ohio-3993, ¶ 2.

{¶ 3} On May 11, 2017, defendant entered pleas of guilty to three first-degree felony counts of rape, in violation of R.C. 2907.02. Defendant was sentenced by the trial court consistent with the parties' joint recommendation to a sentence of 6 years on each count, to be served consecutively with each other, for a total sentence of 18 years.

{¶ 4} Absent a reasonable explanation for failure to perfect a timely appeal, this court has held that an "extensive" 19-month delay in filing a motion for leave to appeal was excessive. *State v. Evans*, 10th Dist. No. 02AP-238 (Sept. 19, 2002) (memorandum decision). We have also previously determined that a delay of both six months and five months in filing a delayed appeal is unreasonable absent a justifiable explanation. *State v. Poindexter*, 10th Dist. No. 01AP-1311 (Jan. 24, 2002) (memorandum decision); *State v. Wise*, 10th Dist. No. 05AP-1237 (Jan. 12, 2006) (memorandum decision).

{¶ 5} Additionally, this court has held that "[a] defendant's ignorance of the law does not automatically establish good cause for failure to timely appeal under App.R. 5(A)." *State v. Ellis*, 10th Dist. No. 05AP-1048, 2005-Ohio-6059, ¶ 5, citing *Walden* at ¶ 3, citing *State v. Reddick*, 72 Ohio St.3d 88, 91 (1995).

{¶ 6} Here, defendant filed his motion for delayed appeal on August 24, 2017, over three months after the journalization of the judgment entry on May 12, 2017. Defendant asserts that he requested his counsel to file an appeal on the date he entered a plea, May 11, 2017, and that counsel failed to do so. Defendant claims that due to being transferred between correctional facilities, he was unable to determine that an appeal was not filed on his behalf.

{¶ 7} Defendant signed a guilty plea form acknowledging that he understood he had a right to appeal within 30 days of the entry of judgment. Defendant has not alleged he was unaware of this right, nor does he explain how being incarcerated prevented him from taking affirmative steps to protect his appellate rights under these circumstances. Furthermore, the mistaken belief that counsel has filed an appeal on one's behalf has previously been rejected as a reasonable explanation for failing to file a timely appeal. *State v. Hayes*, 10th Dist. No. 11AP-636 (Sept. 27, 2011) (memorandum decision); *State v.*

Morris, 10th Dist. No. 10AP-160 (Mar. 31, 2010) (memorandum decision); *State v. Thombs*, 10th Dist. No. 07AP-364 (June 19, 2007) (memorandum decision).

{¶ 8} Defendant has not demonstrated a reasonable explanation for failure to perfect a timely appeal. Defendant's motion requesting leave to file a delayed appeal, motion for appointment of counsel, and motion for preparation of a complete transcript of proceedings at state expense are denied.

Motions denied.

TYACK, P.J., and HORTON, J., concur.

FRANKLIN COUNTY PUBLIC DEFENDER

373 South High Street, 12th Floor

Columbus, Ohio 43215

(614) 525-3194

Fax (614) 461-6470

September 21, 2017

Michael Morris # 735-254
Noble Correctional Institution
15708 McConnelville Road
Caldwell, Ohio 43724

Re: Case No(s). 16 CR 3655 – Plea and Sentence Documents

Michael,

I hope you received the case file that I mailed to you.

Your sister Corliss called me and said you were also requesting a copy of the court transcript, the plea, and the sentencing entry. I am enclosing copies of the plea and the sentencing entry. I do not have a transcript. Usually, a transcript is only prepared once an appeal has begun. It looks like you have filed paperwork with the Court requesting that a transcript be created, but I don't have access to any transcript.

I would recommend that you write to the Ohio Public Defender to see if they can be of any help in your appeal and/or postconviction petitions. They are the best-equipped agency to assist people with appeals and postconviction issues. Their contact information is:

Ohio Public Defender
250 E. Broad St. Suite 1400
COLUMBUS, OHIO 43215
(614) 466-5394
(800) 686-1573

If there is anything else I can be of help with, please feel free to write.

Best wishes,



Leon Smoff

Attorney at Law

Franklin Cty Public Defender