

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

STEVEN L. OBERRY,

Defendant-Appellant.

Case No. 23-0014

On Discretionary Appeal from the
Montgomery County Court of Appeals
Second Appellate District

C.A. Case No. 29566

MOTION FOR LEAVE TO FILE DELAYED APPEAL OF
APPELLANT STEVEN L. OBERRY PURSUANT TO OHIO S. CT. PRAC. R 7.01(A)(4)(a)

Montgomery County Prosecutor

PROSECUTOR NAME AND COUNTY NAME

301 West Third Street

ADDRESS

Dayton, Ohio 45402

CITY, STATE & ZIP

PHONE

Steven L. Oberry#A718-795

NAME AND NUMBER

London Correctional Institution

INSTITUTION

P.O.Box 69

ADDRESS

London, Ohio 43140

CITY, STATE & ZIP

COUNSEL FOR APPELLEE, STATE OF
OHIO

DEFENDANT-APPELLANT, PRO SE

RECEIVED
DEC 19 2022
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
JAN 04 2023
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
JAN 04 2023
CLERK OF COURT
SUPREME COURT OF OHIO

**MOTION FOR LEAVE TO FILE DELAYED APPEAL
OF APPELLANT STEVEN L. OBERRY**

Steven L. Oberry respectfully moves this Court for leave to file a delayed appeal from the Journal Entry of the Montgomery County Court of Appeals, Second Appellate District, entered in Court of Appeals Case No. C.A. No-29566 entered on the date September 13, 2022.

The appellant's delayed appeal should be granted for at least two (2) reasons. First, the Exhibit (A) pgs. 1-2; Exhibit (B) ; Exhibit (C); Exhibit (D) pgs. 1-3, all attached hereto appellant's Motion for Leave to file delay appeal, show that the appellant's appeal of the Second District Court of Appeals September 13, 2022 decision was timely received by the Clerk of the Ohio State Supreme Court prior to the October 28, 2022 deadline.

The appellant's appeal of the Second District's September 13, 2022 decision was due in the Ohio Supreme Court's Clerk office on or before October 28, 2022. Said Exhibits, Affidavits of Truth, are prima facie evidence that the Clerk of the Ohio State Supreme Court (STEVEN) did in fact receive and possessed the appellant's "appeal" on October 28, 2022, satisfying the October 28, 2022 deadline. For these reasons, this Court should grant the appellant's Motion For Leave To File Delayed Appeal.

Second, the appellant's Motion for leave should be granted on grounds that his appeal of the Second District Court of Appeals September 13, 2022 decision was timely filed pursuant to the MAILBOX RULE. See, State v. Webb, 11 Ohio St.2d at[*62]; see also Houston v. Lack, 487 U.S. 266. As evidenced by Exhibit (E), attached hereto this Motion for Leave, the appellant's "PERSONAL A/C WITHDRAWAL CHECK OUT SLIP" show the appellant's appeal of the

Second District's Court of Appeals September 13, 2022 decision was addressed to the Ohio State Supreme Court at 65 S. Front St. and was handed over by appellant to the prison mailroom authorities for purpose of mailing on OCTOBER 24, 2022, as witnessed in the lower right corner of said document.

Under the MAILBOX RULE, the appellant's notice of appeal was deemed filed on October 24, 2022, the moment of delivery to prison authorities for mailing to the Ohio State Supreme Court. Because the appellant's appeal was deemed filed on October 24, 2022, four days prior to the October 28, 2022 deadline, the appellant's notice of appeal was timely filed and, for these reasons, this Court should grant the appellant's Motion For Leave to file a Delayed Appeal.

An affidavit(s) supporting the Appellant's allegations is attached hereto. Exhibits. Because the Appellant did not unduly delay the filing of this appeal, this Court should permit the Appellant to file a delayed appeal.

Respectfully submitted,



Steven L. Oberry #A718-795

London Correctional Institution

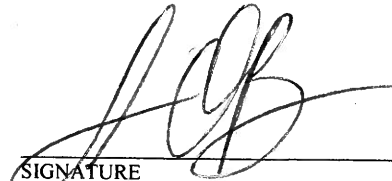
P.O.Box 69

London, Ohio 43140

DEFENDANT-APPELLANT, PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave to File Delayed Appeal was forwarded by regular U.S. Mail to Montgomery County, Prosecuting Attorney, Montgomery County at the address of 301 West Third Street , Dayton, Ohio 45402 on the date Dec, 8 2022


SIGNATURE
Steven L. Oberry#A718-795
NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

AFFIDAVIT OF TRUTH

STATE OF OHIO)

) :ss

MADISON COUNTY)

To wit be it known that Steven O’Berry # 718-795 (Here-in-After) Affiant, which whom is known to be currently held at London Correctional Institution 1580 State Route 56 SW London Ohio 43140, does hereby swear under the penalty of perjury laws for the State of Ohio, that I can testify to any and all of the following stated within this document, that on October 24, 2022, London Correctional Institution Mail Room mailed my Legal mail to Ohio Supreme Court:

1 I , Affiant, state that my mother by the name of Mildred O’Berry called with her cell phone
2 To the Ohio Supreme Court Clerk of Courts, (Phone No. (678)-923-8717) on October 27th,
3 2022 to check on my Appeal. Ms. O’Berry spoke to a Clerk who said that my Appeal was
4 not there. On October 28th, 2022 Ms. O’Berry called back to Ohio Supreme Court Clerk
5 of Courts. A Clerk by the name Steven, stated that my Appeal was there and he was going
6 to file, stamp, return, after he look over everything and send Mr. Steven O’Berry all copies
7 when this phone call was taking place. Lakesha O’Berry was present with Mildred O’Berry
8 sitting there listening to Ms. O’Berry talk to the Clerk and heard the Clerk of Court State
9 that he had Steven O’Berry Appeal paperwork in his hand while he looked it over, See,
10 (phone records, Exhibit 1-2). The Clerk of Courts did not uphold its duty.
11 November 7, 2022, I was called to the Prison Mailroom at London Correctional to pick up

12 some legal mail, it was from the Ohio Supreme Court, denying Mr. O’Berry ‘s Appeal
13 on grounds that Mr. O’Berry did not make the deadline. On October 27th, 2022, the Clerk
14 Of the Ohio Supreme Court stated that the weekends didn’t count within the 45-day
15 deadline. The deadline was October 28th, 2022. On October 28th, 2022, the Clerk of the
16 Ohio Supreme Court Stated while on the phone with Ms. O’Berry that he had Mr. O’Berry
17 Appeal paperwork in his hands. Instead of the Clerk timely filing my appeal paperwork
18 while he had it in his hands on October 28th, 2022, the Clerk waited until October 31st,
19 2022, three days later to file my appeal paperwork, causing my appeal to be untimely
20 filed.

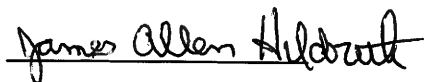
21 I state that my appeal documents were delivered to the Clerk of the Ohio Supreme Court
22 in time to be timely filed. The untimely filing of my appeal was through no fault of my own
23 but due to the Clerk of the Ohio Supreme Court’s failure to stamp file the appeal paper
24 work on October 28th, 2022 when it was in the Clerks possession. I should rightfully be
25 allowed to proceed with my appeal as though it is being timely filed in the Ohio Supreme
26 Court.

AFFIANT FURTHER SAYETH NAUGHT.



Steven O’Berry# A718-795

Sworn before me and signed in my presence this 29 day of November, 2022.




NOTARY PUBLIC

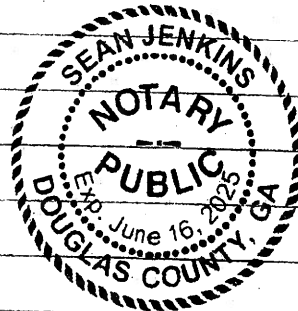
My commission Expires: 10-07-2025



I Mildred O'berry called Supreme Court Clerk on Oct. 28th 2022 to see if they receive my son Steven O'berry paperwork. I called around nine twenty-one a.m. A woman answered and said "We have not received anything in the morning mail." Then after she said check back on the second run in the afternoon mail. Later on at 1:04 pm I called some man named Steve answered and said "Yes! we received it and I have it in my hand right now". He said he was about to make copies of the paperwork, and send them where they need to go. I made, to ask him to repeat everything so my daughter could hear everything, and repeat all of it.

Mildred O'Berry

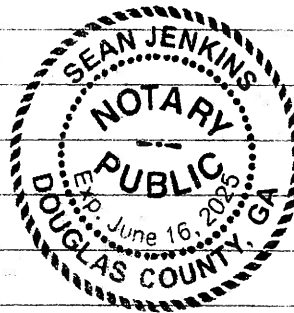
WITNESSED BEFORE ME THIS 22
 DAY OF Nov, 2022
 COBB COUNTY, GEORGIA

 Notary Public



I Lakesha OBerry did hear
the guy Steve tell my mother that
he had Steve OBerry paperwork
in his hand and he going to make
copies and send them all where
they supposed to go. that was
on Oct, 28, 2022 around one something
pm.

Lakesha OBerry 11/22/2022

WITNESSED BEFORE ME THIS 22
DAY OF Nov, 20 22
COBB COUNTY, GEORGIA
[Signature]
Notary Public



You have received a *JPAY* letter, the fastest way to get mail

From : Lakesha Oberry, CustomerID: 25256888
 To : STEVEN OBERRY, ID: A718795
 Date : 11/14/2022 11:44:53 AM EST, Letter ID: 1632833972
 Location : LOCI
 Housing : B2206L

	05:29 pm	(740) 837-4126	Incoming
	05:36 pm	(937) 559-2137	DAYTON,OH
	05:54 pm	(740) 837-4126	Incoming
	08:50 pm	(740) 837-4126	Incoming
	09:15 pm	(740) 837-4126	Incoming
	09:53 pm	(740) 837-4126	Incoming
	10:19 pm	(740) 837-4126	Incoming
Oct 28	08:25 am	(866) 386-3071	Toll Free Call
	09:21 am	(614) 387-9530	COLUMBUS,OH
	01:01 pm	(740) 837-4126	Incoming
	01:04 pm	(614) 387-9530	COLUMBUS,OH
	01:22 pm	(740) 837-4126	Incoming
	01:25 pm	(740) 837-4126	Incoming
	02:12 pm	(740) 837-4126	Incoming
	10:05 pm	(740) 837-4126	Incoming
	11:25 pm	(866) 386-3071	Toll Free Call

You have received a *jp*ay letter, the fastest way to get mail

From : Lakesha Oberry, CustomerID: 25256888
To : STEVEN OBERRY, ID: A718795
Date : 11/8/2022 2:59:27 PM EST, Letter ID: 1629110244
Location : LOCI
Housing : B2206L

10/31/22 **6:07 PM**
740-837-4126 Incoming,

10/31/22 **5:11 PM**
937-794-7501 PIQUA,OH

10/31/22 **3:51 PM**
740-837-4126 Incoming,

10/31/22 **2:51 PM**
614-387-9530 COLUMBUS,OH

10/31/22 **12:46 PM**
740-837-4126 Incoming,

10/31/22 **12:16 PM**
614-387-9530 COLUMBUS,OH

10/31/22 **3:52 AM**
937-794-7501 PIQUA,OH

10/31/22 **2:44 AM**
866-386-3071 Toll Free Call,

You have received a *JPAY* letter, the fastest way to get mail

From : Mildred Oberry, CustomerID: 27862429
To : STEVEN OBERRY, ID: A718795
Date : 11/15/2022 10:59:23 PM EST, Letter ID: 1634042963
Location : LOCI
Housing : B2206L

10:50



Sprint is now
T-Mobile



Cart



Call to Order



My Account



Oct 28 01:01 PM	(740) 837-4126
Oct 28 01:04 PM	(614) 387-9530
Oct 28 01:22 PM	(740) 837-4126
Oct 28 01:25 PM	(740) 837-4126
Oct 28 02:12 PM	(740) 837-4126
Oct 28 10:05 PM	(740) 837-4126
Oct 28 11:25 PM	(866) 386-3071
Oct 28 11:26 PM	(866) 386-3071
Oct 28 11:28 PM	(866) 386-3071
Oct 29 12:35 AM	(866) 386-3071
Oct 29 12:46 AM	(866) 386-3071
Oct 29 09:58 AM	(866) 386-3071
Oct 29 10:42 AM	(866) 386-3071

Back to to

2066




Personal A/C Withdrawal Check Out-Slip

Dollars: 2 Cents: 16

Institution: <u>LOCZ</u>	Date: <u>10-20-22</u>
Name: <u>OFFICE OF THE CLERK</u>	
Address: <u>65 S. FRONT ST.</u>	
City: <u>COLUMBUS</u>	State: <u>OHIO</u>
	Zip Code: <u>43215</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: 	Number: <u>718795</u>	Block & Cell Number: <u>B-2 2066</u>
Approved By: 	Witnessed: 	

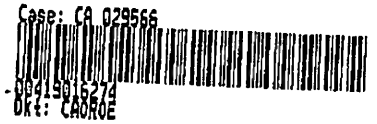
Ship V/A:	Date Processed: <u>10/24/22</u>
CANARY - Inmate	
Pink	

20

FILED
COURT OF APPEALS

2022 SEP 13 PM 12:08

IN THE COURT OF APPEALS OF OHIO
CLERK OF COURTS SECOND APPELLATE DISTRICT
MONTGOMERY CO OHIO MONTGOMERY COUNTY



STATE OF OHIO

Appellee

v.

STEVEN L. O'BERRY

Appellant

C.A. No. 29566

Trial Court Case No. 2015 CR 00348

**DECISION AND FINAL JUDGMENT
ENTRY**

PER CURIAM:

This matter is before the court on appellant's August 23, 2022, motion for leave to file a delayed appeal. On August 29, 2022, the State of Ohio responded to appellant's motion by filing a motion to dismiss the appeal as untimely. This matter is now ripe for decision.

Appellant seeks to appeal from his September 10, 2015, judgment of conviction having pleaded guilty to three counts of rape, three counts of sexual battery, and one count of gross sexual imposition. Appellant was represented by appointed counsel. The trial court sentenced appellant to an 18 year prison sentence.

Appellant argues that his nearly seven-year delay in filing a notice of appeal should be excused because the trial court and his appointed counsel failed to advise him of his right to appeal. Appellant claims that he lacked knowledge of his right to appeal. The

State of Ohio responds that this is insufficient justification to overcome an untimely filing of this length.

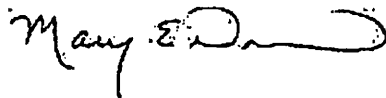
The right of a criminal defendant to take a direct appeal from their conviction is "broad, firmly established, and structurally protected in the event of an *excusable* delay." *State v. Houston*, 2d Dist. Montgomery No. 29114, 2021-Ohio-3538, ¶ 6 (emphasis added). "Some delay is presumed where a criminal defendant is seeking delayed appeal under App.R. 5(A)." *Id.* at ¶ 7. If the movant establishes "sufficient reasons justifying the delay," the court of appeals "may, in its discretion, grant the motion." *State v. Silsby*, 119 Ohio St.3d 370, 2008-Ohio-3834, 894 N.E.2d 667, ¶ 12.

Appellant has not demonstrated sufficient reasons justifying the length of his delay in filing a notice of appeal. In our view, the amount of delay involved in this appeal considerably exceeds that which an incarcerated, indigent, and unrepresented defendant might reasonably encounter in appealing their conviction and sentence. Therefore, appellant's motion for leave to file a delayed appeal is OVERRULED.

This appeal, Montgomery County Appellate Case No. 29566, is DISMISSED. The State of Ohio's motion to dismiss is OVERRULED as moot.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the Clerk of the Montgomery County Court of Appeals immediately serve notice of this judgment upon all parties and make a note in the docket of the mailing.

SO ORDERED.



MARY E. DONOVAN, JUDGE

Jeffrey M. Welbaum

JEFFREY M. WELBAUM, JUDGE

Christopher B. Epley

CHRISTOPHER B. EPLEY, JUDGE

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London Corr. Inst.
1580 State Route 56
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Service Method: Postal Mail Service

Montgomery County Clerk of Courts
(Distribution Member)
Service Method: Electronic Service
Email: clerkappeals@mcoho.org