

COURT OF APPEALS OF THE STATE OF GEORGIA

McDuffie v. The State

A18A1908 · No. A18A1908 · Decided July 19, 2018

SUMMARY

The Georgia Court of Appeals dismissed Robert McDuffie's appeal because he failed to file a brief and enumeration of errors within the time required by Court of Appeals Rule 23(a). The order explains that, because McDuffie was represented by counsel, he may seek leave from the trial court to pursue an out-of-time appeal.

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
JURISDICTION	Georgia
DECIDED	July 19, 2018
DOCKET	A18A1908
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant's appeal was dismissed after he failed to file a brief and enumeration of errors within the time required by the Court of Appeals rules.
PRECEDENTIAL VALUE	Published court order; precedential scope not otherwise specified in the source.
PARTIES	McDuffie v. The State

TOPICS

- appellate procedure
- criminal procedure
- post-conviction relief

PRACTICE AREAS

- appellate procedure
- criminal procedure

QUESTIONS PRESENTED

- Whether an appeal should be dismissed as abandoned when the appellant fails to file a brief and enumeration of errors within the period required by Court of Appeals Rule 23(a).

HOLDINGS

1. An appellant's failure to file a brief and enumeration of errors within the 20-day period required by Court of Appeals Rule 23(a) constitutes abandonment of the appeal and warrants dismissal.

KEY QUOTATIONS

“As Appellant has abandoned the appeal, the appeal is hereby DISMISSED.”

FACTUAL BACKGROUND

The appeal was docketed, and appellant was notified that a brief and enumeration of errors were required within 20 days. Appellant did not timely file those materials. Because appellant was represented by counsel, the court advised him that he might seek leave from the trial court to file an out-of-time appeal.

PROCEDURAL HISTORY

After the appeal was docketed and appellant was notified of the filing requirements, appellant failed to file a brief and enumeration of errors within 20 days. The Court of Appeals treated the appeal as abandoned and dismissed it, while informing represented appellant of the potential procedure for seeking an out-of-time appeal in the trial court.

DISPOSITION

dismissed

CASES CITED

- Rowland v. State, 264 Ga. 872, 875-76 (2), 452 S.E.2d 756 (1995)

OPINION

PER CURIAM.

Court of Appeals of the State of Georgia ATLANTA, _____ June 29, 2018 The Court of Appeals hereby passes the following order: A18A1908. MCDUFFIE v. THE STATE. Appellant has failed to file a brief and enumeration of errors within 20 days after the appeal was docketed as required by Court of Appeals Rule 23 (a) and as notified in the Notice of Docketing.

As Appellant has abandoned the appeal, the appeal is hereby DISMISSED. Because Appellant is represented by counsel, Appellant may be entitled to pursue an out-of-time appeal. He is therefore informed of the following pursuant to Rowland v. State, 264 Ga. 872, 875-76 (2) (452 SE2d 756) (1995): This appeal has been dismissed because you have failed to timely pursue your appeal.

If you still wish to appeal, you may petition the trial court for leave to file an out-of-time appeal. If the trial court grants your request, you will have 30 days from entry of that order to file a notice of appeal referencing your conviction. If the trial court denies your request, you will have 30 days

from entry of that order to file a notice of appeal referencing the denial of your request for an out-of-time appeal.

The Clerk of Court is DIRECTED to send a copy of this order to Appellant and Appellant's attorney, and the latter is also DIRECTED to send a copy to Appellant. Court of Appeals of the State of Georgia Clerk's Office, Atlanta,_____ 06/29/2018 I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia. Witness my signature and the seal of said court hereto affixed the day and year last above written., Clerk.