

INDIANA SUPREME COURT

Koenig v. State

765 N.E.2d 522 (Ind. 2002) · No. 49S04-0201-CR-92; 49A04-0103-CR-115 · Decided January 30, 2002

SUMMARY

The Indiana Supreme Court granted transfer and remanded the appeal for reinstatement after the State first argued that the appellant should pursue a belated appeal and later moved to dismiss that belated appeal for lack of diligence. The court held that the State’s inconsistent actions and failure to object to the motion for leave warranted vacating the dismissal and directing the Court of Appeals to hear the appeal on the merits.

CASE DETAILS

COURT	Indiana Supreme Court
JURISDICTION	Indiana
DECIDED	January 30, 2002
DOCKET	49S04-0201-CR-92; 49A04-0103-CR-115
DISPOSITION	remanded
PROCEDURAL POSTURE	The Indiana Supreme Court granted transfer from the Court of Appeals, which had dismissed Koenig’s belated appeal from his underlying convictions on the ground that he had not acted diligently under Post-Conviction Rule 2, section 1(b).
PRECEDENTIAL VALUE	Published Indiana Supreme Court opinion/order; precedential status indicated as published.
PARTIES	Jeffrey Koenig v. State of Indiana

TOPICS

- appellate procedure
- state post-conviction relief
- post-conviction relief
- criminal procedure
- preservation of error

PRACTICE AREAS

- criminal appellate procedure
- post-conviction relief
- belated appeal

QUESTIONS PRESENTED

1. Whether the State's inconsistent conduct and failure to object when Koenig sought and obtained permission to file a belated notice of appeal barred the State from later seeking dismissal of that appeal for lack of diligence.
2. Whether the Court of Appeals erred by dismissing the belated appeal after the State had invited the procedural course and allowed the appeal to proceed.

HOLDINGS

1. The State's inconsistent actions and failure to object to Koenig's motion for leave to file a belated notice of appeal warranted reinstatement of the appeal; the State could not obtain dismissal on the diligence ground after inducing and permitting the belated-appeal procedure to proceed.

KEY QUOTATIONS

“The State’s inconsistent actions and failure to object to the motion seeking leave to file a belated notice of appeal warrant the appeal being reinstated.”

“Accordingly, we grant transfer and remand the appeal to the Court of Appeals with instructions to vacate its order granting the State’s motion to dismiss, to deny the motion, and to establish a briefing schedule for review of the appeal on the merits.”

FACTUAL BACKGROUND

Koenig did not timely appeal his 1997 convictions or the 1999 revocation of probation and sentencing order. In post-conviction proceedings, the State expressly represented that his remedy was to seek leave to file a belated appeal from the underlying convictions. Koenig followed that course, the State did not object, and the trial court granted leave; only after counsel prepared the record and filed a brief did the State argue that Koenig had not been diligent.

PROCEDURAL HISTORY

Koenig was convicted of three counts each of robbery and criminal confinement in 1997, received suspended concurrent sentences, and was placed on probation. After probation was revoked in 1999, he filed a petition for post-conviction relief alleging, among other things, denial of counsel for an appeal. The State argued that he should instead seek permission for a belated appeal under Post-Conviction Rule 2, section 1, and the trial court later granted Koenig’s unopposed motion for that relief. After briefing was completed, the State moved to dismiss for lack of diligence; the Court of Appeals granted the motion. The Supreme Court granted transfer and remanded for reinstatement of the appeal and consideration on the merits.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Court of Appeals was instructed to vacate its order granting the State's motion to dismiss, deny the motion, and establish a briefing schedule for review of the appeal on the merits.

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