

COURT OF APPEALS OF GEORGIA

Aldridge v. State

188 Ga. App. 729 (Ga. Ct. App. 1988) · Decided October 6, 1988

SUMMARY

The Georgia Court of Appeals held that although the trial court properly authorized an out-of-time appeal because trial counsel failed to file an appeal as requested, the defendant’s notice of appeal was filed 78 days after that authorization and was therefore untimely. The court dismissed the appeal, concluding that no further extension was authorized.

CASE DETAILS

|                       |                                                                                                                                                  |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Georgia                                                                                                                      |
| WRITING FOR THE COURT | Sognier, Judge; Sognier; Deen, P. J.; Parley, J.                                                                                                 |
| JURISDICTION          | Georgia                                                                                                                                          |
| DECIDED               | October 6, 1988                                                                                                                                  |
| DISPOSITION           | dismissed                                                                                                                                        |
| PROCEDURAL POSTURE    | Appeal from the dismissal of a criminal appeal as untimely after the trial court granted the defendant permission to file an out-of-time appeal. |
| STANDARD OF REVIEW    | The timeliness of the notice of appeal and the trial court's authority under the governing appellate statutes were reviewed as legal questions.  |
| PRECEDENTIAL VALUE    | published opinion                                                                                                                                |
| PARTIES               | Glenn Aldridge v. State                                                                                                                          |

TOPICS

- appellate procedure
- criminal procedure
- final judgment rule

PRACTICE AREAS

- criminal appellate procedure
- criminal procedure

QUESTIONS PRESENTED

1. Whether the trial court was authorized to grant Aldridge permission to file an out-of-time appeal when trial counsel failed to file an appeal despite being asked to do so.
2. Whether Aldridge's notice of appeal was timely when filed seventy-eight days after the order granting permission to file an out-of-time appeal.
3. Whether the trial court could grant an additional extension of time for filing the notice of appeal.

#### **HOLDINGS**

1. A criminal defendant may be permitted to file an out-of-time appeal when trial counsel fails to file an appeal despite the defendant's request; therefore, the trial court was authorized to grant Aldridge's motion.
2. The notice of appeal was untimely because it was filed seventy-eight days after entry of the order allowing the out-of-time appeal.
3. The trial court was not authorized to grant additional time because Aldridge never requested an additional extension and OCGA § 5-6-39 (c) permits only one extension, limited to the period otherwise allowed for the initial notice.

#### **KEY QUOTATIONS**

*“Although OCGA § 5-6-38 (a) provides that “[a] notice of appeal shall be filed within 30 days after entry of the appealable decision or judgment complained of,”” (188 Ga. App. at 729)*

*“OCGA § 5-6-39 (c) permits only one extension of time for filing a notice of appeal, and states further that “the extension shall not exceed the time otherwise allowed for the filing of the notices initially.”” (188 Ga. App. at 729)*

#### **FACTUAL BACKGROUND**

Aldridge was convicted on August 13, 1985, of escape and second degree criminal damage to property. He moved for an out-of-time appeal, asserting that trial counsel failed to file an appeal after being requested to do so, and the trial court granted that motion. Aldridge filed his notice of appeal seventy-eight days after the order granting permission, without requesting an additional extension of time.

#### **PROCEDURAL HISTORY**

Aldridge was convicted of escape and second degree criminal damage to property. The trial court granted his motion for permission to file an out-of-time appeal because trial counsel allegedly failed to appeal despite being asked to do so. Aldridge then filed a notice of appeal seventy-eight days after the order granting the out-of-time appeal; the trial court dismissed the appeal as untimely, and the Court of Appeals dismissed the appeal.

#### **DISPOSITION**

dismissed

#### **CASES CITED**

- Williams v. Hopper, 243 Ga. 475, 254 S.E.2d 854 (1979)
- Hester v. State, 242 Ga. 173, 175, 249 S.E.2d 547 (1978)
- Willis v. State, 186 Ga. App. 197, 366 S.E.2d 778 (1988)

## OPINION

SOGNIER, J.

Sognier, Judge. Glenn Aldridge was convicted of escape and second degree criminal damage to property on August 13, 1985. He moved on March 19, 1986, for permission to file an out-of-time appeal on the ground that his trial counsel had failed to file an appeal after being asked to do so, and the trial court granted his motion the same day. Appellant then filed a notice of appeal pro se together with a motion for appointment of counsel on June 5, 1986.

The State immediately moved to dismiss the appeal as untimely, and the trial court granted the motion on June 10th. Subsequently, the lower court appointed counsel for appellant on December 4, 1986, and this appeal was docketed on May 11, 1988, after certification of delay in transcript preparation by the superior court clerk. Appellant, through appointed counsel, timely filed a brief addressing the merits of his appeal, and in response the State renewed its contention that the appeal should be dismissed as untimely filed.

Although OCGA § 5-6-38 (a) provides that “[a] notice of appeal shall be filed within 30 days after entry of the appealable decision or judgment complained of,” a criminal defendant may be permitted to file an out-of-time appeal when trial counsel fails to file an appeal despite being requested to do so. Williams v. Hopper, 243 Ga. 475 (254 SE2d 854) (1979).

Thus, the trial court was authorized to grant appellant’s motion for an out-of-time appeal. Nevertheless, appellant’s subsequently-filed notice of appeal was untimely because it was filed seventy-eight days after entry of the order allowing his out-of-time appeal. OCGA § 5-6-39 (c) permits only one extension of time for filing a notice of appeal, and states further that “the extension shall not exceed the time otherwise allowed for the filing of the notices initially.” Appellant never requested an additional extension of time, nor was the trial court authorized to grant more time.

Accordingly, appellant’s appeal is dismissed as untimely filed. See OCGA § 5-6-48 (b) (1); see generally Hester v. State, 242 Ga. 173, 175 (249 SE2d 547) (1978); Willis v. State, 186 Ga. App. 197 (366 SE2d 778) (1988). Appeal dismissed. Deen, P. J., and Parley, J., concur. \*730Decided October 6, 1988. W. Jefferson Hires, for appellant. Glenn Thomas, Jr., District Attorney, Stephen D. Kelley, Assistant District Attorney, for appellee.