

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)

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