

COURT OF APPEALS OF THE STATE OF GEORGIA

Marquet Donald v. The State

A20A1440 · No. A20A1440 · Decided April 3, 2020

SUMMARY

The Georgia Court of Appeals dismissed Marquet Donald's appeal from the denial of his pro se motion for an out-of-time appeal. Because Donald's convictions had already been reviewed on direct appeal, the court held that he was not entitled to an out-of-time appeal and that the denial was not appealable.

CASE DETAILS

|                       |                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of the State of Georgia                                                                                                                            |
| WRITING FOR THE COURT | Per Curiam                                                                                                                                                          |
| JURISDICTION          | Georgia                                                                                                                                                             |
| DECIDED               | April 3, 2020                                                                                                                                                       |
| DOCKET                | A20A1440                                                                                                                                                            |
| DISPOSITION           | dismissed                                                                                                                                                           |
| PROCEDURAL POSTURE    | Appeal from the denial of a pro se motion for an out-of-time appeal following the defendant's prior direct appeal.                                                  |
| STANDARD OF REVIEW    | Jurisdictional review; the court determined whether an order denying an out-of-time appeal was appealable after the defendant had already received a direct appeal. |
| PRECEDENTIAL VALUE    | published                                                                                                                                                           |
| PARTIES               | Marquet Donald v. The State                                                                                                                                         |

TOPICS

- appellate jurisdiction
- appellate procedure
- post-conviction relief
- criminal procedure

PRACTICE AREAS

- criminal appellate procedure
- post-conviction relief

QUESTIONS PRESENTED

1. Whether a criminal defendant who has already obtained direct appellate review of his convictions may obtain an out-of-time appeal.

2. Whether the denial of a motion for an out-of-time appeal is appealable when the defendant has already had a direct appeal.

## HOLDINGS

1. An out-of-time appeal is not available to a criminal defendant whose conviction has already been reviewed by an appellate court on direct appeal because the defendant is not entitled to a second direct appeal from the judgment of conviction.
2. The denial of a motion for an out-of-time appeal is not subject to appeal when the defendant has already had a direct appeal.

## KEY QUOTATIONS

*“An out-of-time appeal is a judicial creation that serves as the remedy for a frustrated right of appeal.”* (at 191)

*“Due to the very nature of an out-of-time appeal, it is not a remedy available to a criminal defendant whose conviction has been reviewed by an appellate court on direct appeal since that defendant is not entitled to a second direct appeal from his judgment of conviction.”* (at 191)

## FACTUAL BACKGROUND

Donald was convicted of multiple serious criminal offenses, including burglary, armed robbery, aggravated assault, firearm-possession, false imprisonment, and theft by taking. His convictions were affirmed on direct appeal. He later sought an out-of-time appeal despite having already received direct appellate review.

## PROCEDURAL HISTORY

A jury convicted Donald of burglary, armed robbery, aggravated assault, firearm-possession, false-imprisonment, and theft offenses. The Court of Appeals affirmed his convictions on direct appeal in *Donald v. State*, 312 Ga. App. 222 (718 S.E.2d 81) (2011). In July 2019, Donald filed a pro se motion for an out-of-time appeal; the trial court denied it, and Donald appealed that denial. The Court of Appeals dismissed the appeal for lack of jurisdiction.

## DISPOSITION

dismissed

## CASES CITED

- *Donald v. State*, 312 Ga. App. 222, 718 S.E.2d 81 (2011)
- *Richards v. State*, 275 Ga. 190, 191, 563 S.E.2d 856 (2002)
- *Brown v. State*, 296 Ga. App. 224, 224, 674 S.E.2d 91 (2009)