

COURT OF APPEALS OF THE STATE OF GEORGIA

Marquet Donald v. The State

A20A1440 · No. A20A1440 · Decided April 3, 2020

OPINION

PER CURIAM.

Court of Appeals of the State of Georgia ATLANTA, _____ March 16, 2020
The Court of Appeals hereby passes the following order: A20A1440. MARQUET DONALD v. THE STATE. A jury convicted Marquet Donald of one count of burglary, three counts of armed robbery, two counts of aggravated assault, four counts of possession of a firearm during the commission of a crime, three counts of false imprisonment, and one count of theft by taking.

This Court affirmed his convictions on direct appeal. Donald v. State, 312 Ga. App. 222 (718 SE2d 81) (2011). In July 2019, Donald filed a pro se motion for an out-of-time appeal. The trial court denied the motion, and he filed this appeal.

However, we lack jurisdiction. “An out-of-time appeal is a judicial creation that serves as the remedy for a frustrated right of appeal.” Richards v. State, 275 Ga. 190, 191 (563 SE2d 856) (2002) (punctuation omitted). “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.” Id. Because Donald has had a direct appeal, he is not entitled to an out-of-time appeal, and the denial of his motion for an out-of-time appeal is not subject to appeal and must be dismissed.

See id.; accord Brown v. State, 296 Ga. App. 224, 224 (674 SE2d 91) (2009). Accordingly, this appeal is hereby DISMISSED for lack of jurisdiction. Court of Appeals of the State of Georgia Clerk’s Office, Atlanta, _____ 03/16/2020 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.