

IN THE SUPREME COURT OF IOWA
Supreme Court No. 20-1530

STATE OF IOWA,
Plaintiff-Appellee,

vs.

VEIL JACOBY JACKSON-DOUGLASS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE BRADLEY J. HARRIS, JUDGE

APPELLEE'S SUPPLEMENTAL BRIEF

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**STATEMENT OF THE ISSUE PRESENTED FOR
REVIEW**

**I. It Would Be Appropriate to Grant Defendant a Delayed
Appeal.**

Authorities

Blink v. McNabb, 287 N.W.2d 596 (Iowa 1980)
Doer v. Sw. Mut. Life Ass'n, 92 Iowa 39, 60 N.W. 225 (1894)
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State v. Wetzel, 192 N.W.2d 762 (Iowa 1971)
Swanson v. State, 406 N.W.2d 792 (Iowa 1987)
Iowa Code § 814.6
Iowa Code § 814.7
Iowa R. Crim. P. 2.28(1)

STATEMENT OF THE CASE

Nature of the Case

On August 2, 2021, the Iowa Supreme Court requested supplemental briefing and asked the parties to address “[w]hether the court has subject matter jurisdiction to hear this appeal[.]” Supreme Court Dkt. No. 20-1530, 08-02-2021 Order.

Facts

On October 15, 2020, the district court entered its judgment of sentence against Defendant. 10-15-2020 Order of Disposition; App. 15–19. On October 29, 2020, Defendant’s trial counsel filed a motion to withdraw and a notice of attorney fees. 10-29-2020 Withdrawal of Counsel, 10-29-2020 Notice of Attorney Fees; App. ---. On November 16, 2020, Defendant filed a pro se notice of appeal. 11-16-2020 Notice of Appeal; App. 21.

ARGUMENT

I. It Would Be Appropriate to Grant Defendant a Delayed Appeal.

Defendant spends most of his supplemental brief arguing that his trial counsel was ineffective for failing to file a notice of appeal or failing to file an amended notice of appeal. *See, generally*, App. Supp. Br. To the extent he claims his trial counsel was ineffective and relief

should be granted on that basis, his claim is barred on direct appeal. *See Iowa Code § 814.7.*

Defendant also claims that his trial counsel's failure to file a notice of appeal left him constructively without counsel, so this Court should treat him as a pro se defendant when he filed his notice of appeal. App. Br. at 17. Defendant's assertion that his trial counsel's representation ended before the notice of appeal was filed is without merit. Iowa Rule of Criminal Procedure 2.28(1) requires appointed counsel to represent a defendant through every stage of the proceedings, from the initial appearance through appeal. Iowa R. Crim. P. 2.28(1). Thus, Defendant was still represented at the time he filed the pro se notice of appeal. While the fact that his trial counsel failed to file a notice of appeal has bearing on whether this Court should grant a delayed appeal, it did not leave him without counsel, either actually or constructively.

Next, Defendant argues that his amended notice of appeal cures any defect in his original notice and "fixes any potential problem caused by the fact that [Defendant] filed this document pro se when represented by counsel[.]" App. Supp. Br. at 20–21. It is the State's position that the second notice of appeal is meaningless. A late notice

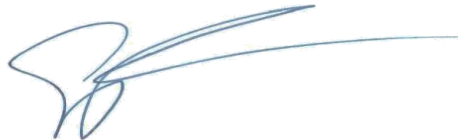
of appeal cannot cure a defective notice of appeal. *See State Sav. Bank of Rolfe v. Ratcliffe*, 111 Iowa 662, 82 N.W. 1011, 1012 (1900) (a defective notice of appeal is not notice of appeal); *Doer v. Sw. Mut. Life Ass'n*, 92 Iowa 39, 60 N.W. 225, 226 (1894) (flawed notice is not notice); *Jeffries v. Mills*, 995 P.2d 1180, 1187 (Or. 2000) (meaningful defect in notice of appeal cannot be cured); *but see State v. Wetzel*, 192 N.W.2d 762, 764 (Iowa 1971) (directing defendant to file a notice of appeal within 60 days of the Supreme Court order recognizing right to delayed appeal); *Blink v. McNabb*, 287 N.W.2d 596, 598 (Iowa 1980) (substantial compliance with the provisions of rule 6 is sufficient to perfect notice of appeal). While there is some authority that minor defects can be cured and satisfy a substantial compliance test, there is no defect in this case; the defendant's notice was a nullity.

Finally, Defendant requests a delayed appeal. App. Supp. Br. at 22–31. While the deadline for filing a notice of appeal is jurisdictional, this Court has recognized its inherent authority to grant delayed appeals in those instances where a valid due process argument might be advanced should the right of appeal be denied. *See Swanson v. State*, 406 N.W.2d 792, 793 (Iowa 1987). And this

Court has granted a delayed appeal when trial counsel's procedural errors have denied a defendant's clearly expressed intention and good faith effort to appeal. *See State v. Anderson*, 308 N.W.2d 42, 46 (Iowa 1981). Here, Defendant both clearly expressed his intent to appeal and made a good faith effort to do so by filing a pro se notice of appeal after his trial counsel moved to withdraw and after his trial counsel failed to file the notice of appeal himself. The fact that trial counsel failed to ensure the notice of appeal complied with Iowa Code section 814.6 is the type of error that should be overcome by the grant of a delayed appeal. As such, granting a delayed appeal to Defendant in this case would be appropriate.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **737** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: September 9, 2021



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