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# Court of Appeals of the State of Georgia

ATLANTA, September 21, 2020

*The Court of Appeals hereby passes the following order:*

**A21D0061. MICHAEL D. DYER v. THE STATE.**

Michael D. Dyer has filed numerous applications in this Court based on his guilty plea to two counts of aggravated child molestation in 2007.<sup>1</sup> In his latest attempt to overturn his convictions, Dyer filed this pro se application for discretionary review on September 1, 2020, seeking to appeal from two orders entered on July 17, 2020: one denied his pro se motion for an out-of-time appeal, and the other dismissed his pro se motion to set aside based on OCGA § 9-11-60. We lack jurisdiction.

First, we lack jurisdiction because, pretermitted whether Dyer has a right to directly appeal the trial court's order denying his motion for an out-of-time appeal,<sup>2</sup> his application is untimely. To be timely, an application must be filed within 30 days of entry of the order to be appealed. See OCGA § 5-6-35 (d). Here, Dyer filed his application 46 days after entry of the orders he seeks to appeal. His application is therefore untimely and subject to dismissal. See *Crosson v. Conway*, 291 Ga. 220,

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<sup>1</sup> See Case Nos. A14D0474 (dismissed Aug. 19, 2014); A16D0422 (denied July 14, 2016); and A19D0054 (denied Sept. 6, 2018).

<sup>2</sup> The denial of a motion for an out-of-time appeal is directly appealable when the conviction at issue has not been the subject of a direct appeal. See *English v. State*, 307 Ga. App. 544, 545 n.4 (705 SE2d 667) (2010); *Lunsford v. State*, 237 Ga. App. 696, 696 (515 SE2d 198) (1999). Generally, if a party applies for discretionary review of a directly appealable order, this Court grants the application under OCGA § 5-6-35 (j). To fall within this general rule, however, the application must be filed within 30 days of entry of the order to be appealed. See OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582, 582 (420 SE2d 393) (1992).

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220 (1) (728 SE2d 617) (2012); see also *Boyle v. State*, 190 Ga. App. 734, 734 (380 SE2d 57) (1989) (“The requirements of OCGA § 5-6-35 are jurisdictional and this [C]ourt cannot accept an appeal not made in compliance therewith.”).

Second, “[i]t has been held many times that a motion to set aside a judgment is inappropriate in a criminal case.” *Lacey v. State*, 253 Ga. 711, 711 (324 SE2d 471) (1985). Regardless of how it is styled, a motion seeking to challenge an allegedly invalid or void judgment of conviction “is not one of the established procedures for challenging the validity of a judgment in a criminal case.” *Roberts v. State*, 286 Ga. 532, 532 (690 SE2d 150) (2010). Because Dyer is not authorized to collaterally attack his conviction in this manner, there is nothing for this Court to review and an application or direct appeal is subject to dismissal. See *id*.

For these reasons, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, 09/21/2020*

*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 *Stephen E. Carlton* \_\_\_\_\_

# Court of Appeals of the State of Georgia

ATLANTA, October 15, 2020

*The Court of Appeals hereby passes the following order*

**A21D0061. MICHAEL D. DYER v. THE STATE.**

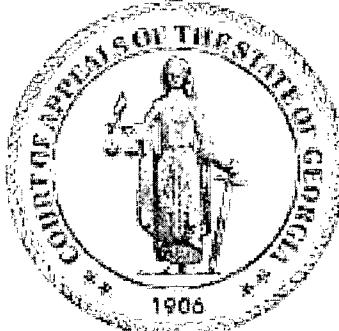
Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta, October 15, 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.*

*Stephen E. Caston, Clerk.*



Appendix (A-1)(A)

p 1 of 2

IN THE SUPERIOR COURT OF HALL COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA  
v.  
MICHAEL DAVID DYER,  
Defendant.

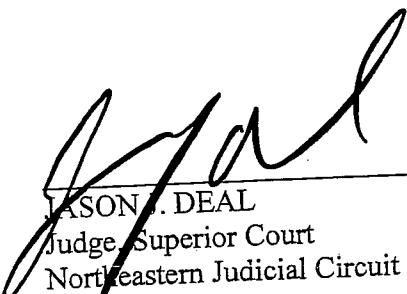
)  
CRIMINAL ACTION  
FILE NO. 06-CR-1284-C

ORDER

Defendant filed a pro se Motion for Out-of-Time Appeal of Guilty Plea on February 26, 2020. "An out-of-time appeal is a judicially-created remedy for a frustrated right of appeal and is granted if the defendant shows he lost his right to a direct appeal through the error of counsel."<sup>1</sup> Defendant having failed to make such showing, Defendant's Motion is hereby

DENIED.

So ORDERED this 13 day of May, 2020.

  
JASON J. DEAL  
Judge, Superior Court  
Northeastern Judicial Circuit

cc: Hall County District Attorney's Office  
✓Mr. Michael Dyer

<sup>1</sup> Sessions v. State, 293 Ga. 33 (2013).

(1.1)  
(Exhibit D.)  
(Page 1 of 2)

Appendix "B 2" 3 of 3.

IN THE SUPERIOR COURT OF HALL COUNTY  
STATE OF GEORGIA

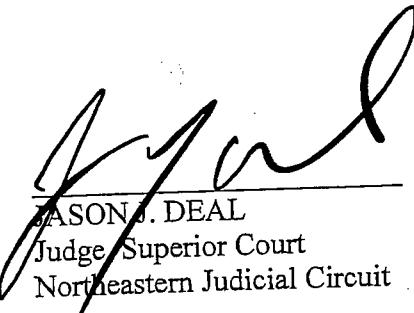
STATE OF GEORGIA )  
v. )  
MICHAEL DAVID DYER, )  
Defendant. )

CRIMINAL ACTION  
FILE NO. 06-CR-1284-C

ORDER

Defendant having filed a pro se Motion for Disclosure of Brady Materials on February 26, 2020, and this case having closed on June 12, 2007, with the entry of a guilty plea, Defendant's Motion is hereby DISMISSED for failure to state a claim upon which relief can be granted.

So ORDERED this 13 day of May, 2020.

  
JASON J. DEAL  
Judge Superior Court  
Northeastern Judicial Circuit

cc: Hall County District Attorney's Office  
✓ Mr. Michael Dyer, GDC # 116953  
Georgia State Prison 153 Pinewood Rd.  
Leesburg, GA 31763

(Exhibits D.) Appendix "B a" 2 of 3.  
PAGE 2 OF 2,

26

FILED  
2020 MAY 14 AM 10:04  
CLERK, HALL COUNTY, GEORGIA  
SUPERIOR COURT



SUPREME COURT OF GEORGIA

Case No. S21C0421

May 17, 2021

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

MICHAEL D. DYER v. THE STATE.

The Supreme Court today denied the petition for certiorari in this case.

*All the Justices concur, except Ellington, J., disqualified.*

Court of Appeals Case No. A21D0061

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

*Theresa J. Barnes*, Clerk

Appendix (A-1) p 2 of 24

**Additional material  
from this filing is  
available in the  
Clerk's Office.**

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