

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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EARL JONES,  
*Petitioner,*

v.

OHIO,  
*Respondent.*

---

ON PETITION FOR WRIT OF CERTIORARI  
TO THE OHIO COURT OF APPEALS, FIRST APPELLATE DISTRICT

---

**MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

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**OFFICE OF THE OHIO PUBLIC DEFENDER**

PETER GALYARDT  
Asst. Ohio Public Defender  
(*Counsel of Record*)

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*Counsel for Petitioner, Earl Jones*

## MOTION

Petitioner Earl Jones, through counsel, respectfully requests leave to file the attached Petition for Writ of Certiorari without prepayment of costs and to proceed *in forma pauperis*. This relief is warranted because in the proceedings below, due to Jones's indigency, the Supreme Court of Ohio appointed counsel on July 8, 2020. *See* App. A.; App. B, Ohio S.Ct.Prac.R. 7.09; *see also* U.S. Supreme Court Rule 39.1. Moreover, Jones remains indigent, unable to hire counsel, and without funds to pay costs because he has been incarcerated in Ohio prisons on a life-without-parole sentence since Nov. 28, 2017. For these reasons, Jones requests leave to file the attached Petition for a Writ of Certiorari without prepayment of costs and to proceed *in forma pauperis*.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

/s/ Peter Galyardt  
PETER GALYARDT  
Asst. Ohio Public Defender

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*Counsel for Petitioner, Earl Jones*

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APPENDIX TO  
**MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

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Supreme Court of Ohio appointment entry,  
*State v. Jones*, 148 N.E.3d 599 (Ohio 2020). ..... IFP Motion App. A  
Ohio S.Ct.Prac.R. 7.09. .... IFP Motion App. B

**State v. Jones**

Supreme Court of Ohio

July 8, 2020, Decided

2020-0368.

**Reporter**

2020 Ohio LEXIS 1597 \*; 159 Ohio St. 3d 1440; 2020-Ohio-3645; 148 N.E.3d 599; 2020 WL 3813238

State v. Jones.

**Notice: DECISION WITHOUT PUBLISHED OPINION**

**Prior History:** Hamilton App. No. C-170647, [2020-Ohio-281](#) [\*1] .

[State v. Jones, 2020-Ohio-281, 2020 Ohio App. LEXIS 335, 151 N.E.3d 1059, 2020 WL 507637 \(Ohio Ct. App., Hamilton County, Jan. 31, 2020\)](#)

**Core Terms**

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appoint

**Opinion**

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**MOTION AND PROCEDURAL RULING**

On appellee's motion to appoint the Office of the Ohio Public Defender as counsel. Motion granted. Office of the Ohio Public Defender appointed to represent appellee.

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## **Ohio S. Ct. Prac. R 7.09**

Rules current through rule amendments received through March 10, 2022

**OH - Ohio Local, State & Federal Court Rules > Rules Of Practice Of The Supreme Court Of Ohio > Section 7. Jurisdictional appeals**

### **S.Ct. Prac. R. 7.09. Appointment of counsel in felony cases**

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If the Supreme Court accepts a jurisdictional appeal or a certified-conflict case involving a felony and an unrepresented party to the appeal is indigent, the Supreme Court will appoint the Ohio Public Defender or other counsel to represent the indigent party or order the court of appeals to appoint counsel as provided in S.Ct.Prac.R. 7.01(D)(2).

### **History**

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Eff 6-1-94. Amended, eff 4-1-96; 4-1-00; 4-1-02; 7-1-04; 1-1-08; 1-1-10; amended 12-5-12, effective 1-1-13; amended 12-9-14, effective 1-1-15.

Annotations

### **Case Notes**

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Appeal

-- Notice

Jurisdiction

### **Appeal**

Where the time period for reconsideration in the court of appeals and direct appeal to the Supreme Court has expired, a delayed claim of ineffective assistance of appellate counsel must first be brought in an application for delayed reconsideration in the court of appeals where the alleged error took place, pursuant to App.R. 26 and 14(B), and if delayed reconsideration is denied then the defendant may file for delayed

appeal in the Supreme Court, pursuant to [Section 8, Rule II of the Rules of Practice of the Supreme Court: State v. Murnahan, 63 Ohio St. 3d 60, 584 N.E.2d 1204, 1992 Ohio LEXIS 225 \(1992\).](#)

Even assuming that Supreme Court Rule II, § 8 requires a prisoner to take a delayed appeal from the court of appeals to the supreme court in order to exhaust state remedies for purposes of federal habeas corpus relief, this would not mean that delayed appeal is available where there has been a prior direct appeal, especially where RC § 2953.05 provides no such right of delayed appeal: (decided under former analogous section) [Keener v. Ridenour, 594 F.2d 581, 1979 U.S. App. LEXIS 15850 \(6th Cir. 1979\).](#)

Presumably, because the language of Supreme Court Rule II, § 1 does not require dismissal where the notice of appeal is not timely filed or offered for filing, delayed appeals to the Supreme Court are possible and permissible: (decided under former analogous section) [Smith v. Sheeter, 402 F. Supp. 624, 1975 U.S. Dist. LEXIS 16699 \(S.D. 1975\).](#)

#### -- Notice

Where a notice of appeal from a judgment of the court of appeals is duly filed in the court of appeals but no copy of such notice is filed in the supreme court within 20 days after such filing in the court of appeals as required by Section 1(A), Rule I, of the supreme court, such appeal will be dismissed pursuant to Section 1 of Rule II: (decided under former analogous section) [Bazell v. Cincinnati, 13 Ohio St. 2d 63, 42 Ohio Op. 2d 137, 233 N.E.2d 864, 1968 Ohio LEXIS 465 \(1968\).](#)

#### Jurisdiction

Failure to file the memorandum in support of jurisdiction contemporaneously with a copy of the notice of appeal is not a jurisdictional defect: (decided under former analogous section) [Cork v. Bray, 52 Ohio St. 3d 35, 555 N.E.2d 936, 1990 Ohio LEXIS 245 \(1990\).](#)

Rule II, § 5 requires that proof of service of copies of the memorandum in support of jurisdiction be filed with the Supreme Court at the same time the notice of appeal is filed: (decided under former analogous section) [Meyers v. J. & J. Ventures, 51 Ohio St. 3d 604, 554 N.E.2d 897, 1990 Ohio LEXIS 222 \(1990\).](#)

OHIO RULES OF COURT SERVICE

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