

In the Supreme Court of Georgia

Decided: January 7, 2013

S12A1789. MCMULLEN v. THE STATE.

NAHMIAS, Justice.

William McMullen appeals the trial court's order denying his motion for an out-of-time appeal. We affirm.

1. On March 31, 2010, Appellant was indicted for malice murder and possession of a firearm during the commission of a felony. On July 20, 2011, pursuant to a plea deal, Appellant, who was represented by counsel, pled guilty to malice murder; the firearm possession count was nolle prossed.

On June 1, 2012, Appellant filed a motion for out-of-time appeal, contending that (1) his indictment was defective for failing to charge venue and the State did not prove venue beyond a reasonable doubt; (2) the trial court did not have subject matter jurisdiction over the case; and (3) the indictment was improper in form and substance in that it failed to charge the exact date of the alleged offense. On June 7, 2012, the trial court denied Appellant's motion. He

then filed this direct appeal. See Simmons v. State, 276 Ga. 525, 525 n.2 (579 SE2d 735) (2003) (“The denial of a motion for out-of-time appeal is directly appealable when the criminal conviction at issue has not been the subject of direct appeal.”).

2. As this Court recently reiterated,

Out-of-time appeals are designed to address the constitutional concerns that arise when a criminal defendant is denied his first appeal of right because the counsel to which he was constitutionally entitled to assist him in that appeal was professionally deficient in not advising him to file a timely appeal and that deficiency caused prejudice.

Stephens v. State, ___ Ga. ___, ___ (___ SE2d ___) (2012 Ga. LEXIS 784, at *1-2, Case No. S12A1226, decided Oct. 15, 2012). Appellant’s motion for out-of-time appeal did not allege that his failure to file a timely appeal of his conviction was due to any ineffective assistance of counsel, and the motion was therefore correctly denied.

Judgment affirmed. All the Justices concur.