

MAINE SUPREME JUDICIAL COURT

Decision: 2002 ME 84
Docket: Aro-01-351
Argued: May 9, 2002
Decided: May 29, 2002

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, ALEXANDER,
CALKINS, and LEVY, JJ.

AARON KINZEL

v.

STATE OF MAINE

PER CURIAM

[¶1] Aaron Kinzel appeals from a judgment entered in the Superior Court, (Aroostook County, *Mead, C.J.*), denying his petition on post-conviction review. Kinzel contends that his trial attorney neglected to file a notice of appeal after he had asked him to file the notice. His trial attorney denied that Kinzel had ever asked for an appeal. The post-conviction court found both Kinzel and the attorney credible, but concluded that Kinzel failed to sustain his burden of proof.

[¶2] The United States Supreme Court has held “that a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable.” *Roe v. Flores-Ortega*, 528 U.S. 470, 477 (2000) (citing *Rodriguez v. United States*, 395 U.S. 327 (1969)). The post-conviction court’s finding that Kinzel’s assertion is credible indicates that Kinzel did not consent to the decision not to file an appeal. *Id.* Under the unusual circumstances of this case, we hold that Kinzel has made a sufficient showing that his trial attorney did not act in a reasonable manner.

The entry is:

The Defendant's right to appeal is reinstated. Remanded to the Superior Court for further proceedings consistent with the opinion herein.

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