

STATE OF LOUISIANA

_____ JUDICIAL DISTRICT COURT

VERSUS

PARISH OF _____

(d.o.b. ___ / ___ / ___)

NUMBER: _____

Filed: _____

Deputy Clerk

**PRO SE MOTION FOR OUT-OF-TIME APPEAL
OR IN THE ALTERNATIVE FOR A HEARING AS AN
APPLICATION FOR POST CONVICTION RELIEF**

NOW INTO COURT, appearing on his own behalf, comes the defendant, and on suggesting to the Court that:

1.

The defendant was tried and sentenced before this Honorable Court, while represented by counsel.

2.

Appeals are favored by the law and protected by the Louisiana Constitution, Article 1, § 19. See, e.g. *State v. Counterman*, 475 So.2d 336 (La. 1985). Cf. *State v. Wagner*, 07-0860 (La. 2008), 976 So.2d 706.

3.

At no time did the defendant personally waive his constitutional right to an appeal. This right can only be waived by the defendant himself. *State v. Marcell*, 320 So.2d 195 (La. 1975). Any waiver of right to appeal must be an informed one. *Arrastia v. United States*, 455 F.2d 736 (5th Cir. 1972); *Flanagan v. Henderson*, 496 F.2d 1274 (5th Cir. 1974).

4.

The defendant is not aware of any motion for appeal (written or oral) having been filed on his behalf.

5.

The defendant desires and is entitled to the grant of an out-of-time appeal from his felony conviction in the above entitled and numbered cause.

6.

The pro se defendant no longer has counsel and cannot afford counsel, as he is incarcerated and thus presumed indigent. R.S. 15:175 (A)(1)(b). Since he is now indigent, he desires and is entitled to the appointment of counsel for the appeal, namely the Louisiana Appellate Project.

WHEREFORE the defendant prays that this motion be granted and that he be given an out-of-time appeal, with the appropriate appointment of counsel for appeal.

Respectfully submitted,

(Signed) _____
Printed name & DOC # if available
Address:

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served on the District Attorney for this Parish by placing a copy in the U.S. mail system, postage prepaid at the same time it was mailed to the court on the ____ day of _____ 201__.

(Signed) _____

STATE OF LOUISIANA

_____ JUDICIAL DISTRICT COURT

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ORDER

Considering the foregoing motion and for the reasons stated therein;

IT IS ORDERED that an OUT-OF-TIME APPEAL be granted on behalf of the defendant, returnable to the Court of Appeal for the _____ Circuit as set by law, and that the Louisiana Appellate Project be appointed to handle the appeal of this case.

OR

IT IS ORDERED than a hearing be held on the _____ day of _____ 201__ as to whether to issue such order.

_____, Louisiana, this _____ day of _____ 201__.

J U D G E