Court of Appeals
of the State of Georgia

ATLANTA, February 08, 2016

The Court of Appeals hereby passes the following order:

A16A0699. MARCO JOHNSON v. THE STATE.

In 2001, Marco Johnson pled guilty to numerous offenses and was sentenced to serve 20 years. He filed a motion to withdraw his guilty plea, which the trial court denied. We affirmed Johnson's convictions on direct appeal. See *Johnson v. State*, 260 Ga. App. 897 (581 SE2d 407) (2003). Johnson subsequently filed a motion for an out-of-time appeal and, when the trial court failed to rule on his motion, a "Motion for Out-of-Time Order on Out-of-Time Appeal." After the trial court denied the latter motion, Johnson filed this direct appeal.[1] We lack jurisdiction.

"An out-of-time appeal is a judicial creation that serves as the remedy for a frustrated right of appeal." *Kilgore v. State*, 325 Ga. App. 874, 875 (1) (756 SE2d 9) (2014) (citation omitted). Because Johnson already has had a direct appeal, he is not entitled to an out-of-time appeal. See *Richards v. State*, 275 Ga. 190, 191 (563 SE2d 856) (2002) ("[T]here is no right to directly appeal the denial of a motion for out-of-time appeal filed by a criminal defendant whose conviction has been affirmed on direct appeal."). Therefore, the trial court's failure to rule on Johnson's motion for an out-of-time appeal is moot. See *Carlock v. Kmart Corp.*, 227 Ga. App. 356, 361 (3) (a) (489 SE2d 99) (1997) (a moot issue is one where a ruling is sought on a matter that has no practical effect on the alleged controversy or where the issues have ceased to exist). And pursuant to OCGA § 5-6-48 (b) (3), an appeal of an issue that has

[1] The trial court also entered an order denying Johnson's request for an out-of-time appeal. That order, however, was entered after the postmark date of the instant notice of appeal.

become moot is subject to dismissal. For these reasons, this appeal is hereby DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 02/08/2016
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. Castlen , *Clerk.*