Court of Appeals
of the State of Georgia

ATLANTA, June 14, 2016

The Court of Appeals hereby passes the following order:

A16D0394. MICHAEL BROADNAX v. THE STATE.

On August 11, 2015, Michael Bernard Broadnax pled guilty to theft by shoplifting. He filed a pro se motion to withdraw his guilty plea, which the trial court denied on November 3, 2015. Broadnax subsequently filed a motion for an out-of-time appeal, arguing that he did not receive a copy of the trial court's order denying the motion to withdraw his guilty plea until the time to appeal had passed. The trial court denied the motion for an out-of-time appeal on March 14, 2016. Broadnax filed an application for discretionary appeal from that order in the Supreme Court on April 6, 2016. Case No. S16D1302. The Supreme Court then sent the case to us.

The denial of a motion for out-of-time appeal is directly appealable. See *Lunsford v. State*, 237 Ga. App. 696, 696 (515 SE2d 198) (1999); see also *Wetherington v. State*, 296 Ga. 451 (769 SE2d 53) (2015) (addressing merits of direct appeal from denial of motion for out-of-time appeal following guilty plea). Accordingly, this application for discretionary appeal is hereby GRANTED pursuant to OCGA § 5-6- 35 (j). Broadnax shall have ten days from the date of this order to file his notice of appeal in the trial court. OCGA § 5-6-35 (g). The clerk of the trial court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

The State's motion to dismiss this application as duplicitous of Broadnax's direct appeal docketed as A16A1394 is DENIED. The Notice and Amended Notice of Appeal in A16A1394 did not address the trial court's order denying Broadnax's motion for an out-of-time appeal, and we have dismissed that direct appeal because the Notices of Appeal were untimely from the order denying Broadnax's motion to

withdraw his guilty plea.



Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 06/14/2016
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.*