

IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA

v.

\_\_\_\_\_

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INDICTMENT NO. \_\_\_\_\_

**MOTION FOR AN ORDER ALLOWING THE DEFENDANT TO  
FILE A MOTION FOR NEW TRIAL AND PURSUE AN APPEAL OUT-OF-TIME**

\_\_\_\_\_, by the undersigned counsel, hereby moves this Court, on the following basis, for an order allowing him to file out-of-time a motion for new trial and thereafter, if necessary, to pursue an appeal.

1. Defendant is indigent and without funds to employ counsel. Counsel other than the undersigned represented him at the trial of the above-styled case, which on \_\_\_\_\_ culminated in a conviction and in a \_\_\_\_\_ sentence.
2. Through no fault of the Defendant and despite his expressed wish to appeal, trial counsel failed to file a timely motion for new trial or notice of appeal from the conviction herein. Counsel was then appointed to represent him, but more than thirty days after the Defendant was sentenced.
3. Trial counsel's failure to preserve Defendant's appellate rights constituted ineffective assistance of counsel; Defendant is entitled to an out-of-time appeal. Cannon v. State, 175 Ga. App. 741 (1985), citing Evitts v. Lucey, 469 U.S. 387 (1985). Defendant is entitled to a motion for new trial hearing. Ponder v. State, 260 Ga. 840 (1991).

WHEREFORE, Defendant prays that the Court a) schedule a hearing on this matter, b) inquire into this motion and, c) grant him leave to file a motion for new trial out-of-time and afford him such other relief as is appropriate.

\_\_\_\_\_  
Attorney for Defendant  
[address]

[Attachments: Certificate of Service, verification]