Court of Appeals
of the State of Georgia

ATLANTA, October 23, 2026

The Court of Appeals hereby passes the following order:

A27A0454. TYRELL MALEEK CORLEY v. THE STATE.

In 2021, a jury found Tyrell Maleek Corley guilty of aggravated assault and other offenses. Corley appealed the trial court's subsequent denial of his motion for a new trial, but we dismissed the appeal due to his counsel's failure to file a brief. See Case No. A22A0280 (Oct. 6, 2021). The dismissal order informed Corley that he would need to move for an out-of-time appeal in the trial court if he still wanted to appeal. In July 2026, Corley filed a pro se motion for an out-of-time appeal, which the trial court granted in August 2026. With the assistance of counsel, Corley then filed this direct appeal. The State has filed a motion to dismiss the appeal for lack of jurisdiction, arguing that the trial court had no authority to grant an out-of-time appeal under these circumstances. We agree.

In *Cook v. State*, 313 Ga. 471, 506(5) (870 SE2d 758) (2022), the Supreme Court of Georgia determined that trial courts lack authority to grant out-of-time appeals, and that any remedy involving an out-of-time appeal must be sought in habeas corpus. In response, the legislature enacted OCGA § 5-6-39.1, which became effective on May 14, 2025. This statute allows defendants to seek out-of-time relief if (1) the defendant moves for leave to file an out-of-time motion for new trial or notice of appeal within 100 days from the expiration of the time period for the filing of such motion or notice, or (2) the defendant had an out-of-time motion or appeal dismissed under *Cook*. OCGA § 5-6-39.1. "Like other statutory requirements for obtaining an appeal, these time limits for seeking leave to file a notice of appeal are jurisdictional." *Merilien v. State*, ____ Ga. ____ (2026), S26A0704, slip op. at 2 (Ga. Aug. 13, 2026) (2026 WL

2347990).

Here, OCGA § 5-6-39.1 does not apply to Corley because his July 2026 motion for leave to file an out-of-time appeal was filed far more than 100 days after the expiration of the time period for filing such notice, and he did not have a prior motion for an out-of-time appeal dismissed under *Cook*. Therefore, the trial court lacked jurisdiction to consider Corley's request for leave to file an out-of-time notice of appeal and should have dismissed his request for that reason, rather than granting it. See *Conner v. State*, ____ Ga. ____ (2026), S26A1021, slip op. at 3 (Ga. Sept. 9, 2026) (2026 WL 2647699).

"By granting [Corley's] request, the trial court ruled on the merits of a motion over which the trial court lacked jurisdiction or authority to grant, and we will vacate a trial court's order that considers the merits of an untimely motion." *Conner*, slip op. at 3 (quotation marks omitted). Consequently, the trial court's August 2026 order granting Corley's motion for an out-of-time appeal is hereby VACATED and this case is REMANDED for entry of an order dismissing Corley's motion for lack of jurisdiction. See id. at 4. Absent a valid order granting leave to file an out-of-time appeal, Corley's August 2026 notice of appeal is untimely from the 2021 denial of his motion for a new trial, and we therefore lack jurisdiction. See OCGA § 5-6-38(a) (mandating that a notice of appeal be filed within 30 days of the appealable order). See also *Conner*, slip op. at 4. ("[A] timely filed notice of appeal is an absolute prerequisite to this Court's jurisdiction." (quotation marks omitted)). Accordingly, the State's motion to dismiss is hereby GRANTED and this appeal is hereby DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 10/23/2026

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.

Christina Corley Smith , *Clerk.*