

IN THE SUPERIOR COURT OF HOUSTON COUNTY  
STATE OF GEORGIA

State of Georgia, )  
 )  
 vs. )  
 )  
 David Michael Clayboss, )  
 Defendant )  
 \_\_\_\_\_ )

CASE # 2012-C-46262-L

**MOTION FOR OUT OF TIME APPEAL**

COMES NOW the above named Defendant, David Michael Clayboss, and moves this Court to grant him an Out of Time Appeal on the following grounds:

1. "A criminal defendant who has lost his right to appellate review of his conviction due to error of counsel is entitled to an out-of-time appeal." Rowland v. State, 264 Ga. 872, 452 S.E.2d 756 (1995).
2. On August 13, 2013, Defendant was convicted and sentenced for the above-styled case. Different attorneys represented Defendant for trial and motion for new trial. Defendant's trial counsel failed to file a motion for new trial to preserve Defendant's appellate rights. Neither appellate counsel nor counsel for the state discovered that a timely motion for new trial had not been filed.
3. Trial Counsel did not file a Notice of Appeal on Defendant's behalf, despite Defendant's request to do so.
4. Defendant has never affirmatively waived his right to appeal, nor has he performed any act which can be construed as a waiver.

WHEREFORE, Defendant prays that this Court grant him an out of time appeal.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 1, 2014 I served a copy of the foregoing via electronic case filing/service:

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