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APPELLANT PRO SE:

**CLARENCE COVINGTON**  
Carlisle, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**MATTHEW D. FISHER**  
Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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CLARENCE COVINGTON, )

Appellant-Defendant, )

vs. )

No. 48A04-0610-CR-544

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE MADISION SUPERIOR COURT  
The Honorable Dennis Carroll, Judge  
Cause No. 48D01-9502-CF-45

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**August 24, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Petitioner, Clarence Covington (Covington), appeals the trial court's denial of his petition for leave to file a belated notice of appeal.

We affirm.

## ISSUE

Covington raises one issue on appeal, which we restate as: Whether the trial court abused its discretion by denying his request to file a belated notice of appeal.

## FACTS AND PROCEDURAL HISTORY

On February 7, 1995, the State filed an Information charging Covington with dealing in cocaine, as a Class A felony. On November 14, 1995, a jury trial was held in Covington's absence because he had fled from authorities. On November 17, 1995, the jury found Covington guilty as charged *in absentia*. On December 18, 1995, the trial court sentenced Covington to thirty years in the Department of Correction. On May 28, 1999, Covington was apprehended. On June 15, 2006, Covington filed a petition for leave to file a belated notice of appeal. On June 26, 2006, Covington filed an Amended Verified Petition to File a Belated Appeal (Petition). On August 22, 2006, the trial court held a hearing on Covington's Petition. On September 1, 2006, the trial court denied Covington's Petition.

Covington now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

Ind. Post-Conviction Rule 2 permits a defendant to seek permission to file a belated notice of appeal. The rule provides, in pertinent part:

Where an eligible defendant convicted after a trial . . . fails to file a timely notice of appeal, a petition for permission to file a belated notice of appeal for appeal of the conviction may be filed with the trial court, where:

- (a) the failure to file a timely notice of appeal was not due to the fault of the defendant; and
- (b) the defendant has been diligent in requesting permission to file a belated notice of appeal under this rule.

Ind. P-C R. 2(1). The defendant bears the burden to prove both of these requirements by a preponderance of the evidence. *Beatty v. State*, 854 N.E.2d 406, 409 (Ind. Ct. App. 2006), *reh'g denied*.

While there are no set standards defining delay and each case must be decided on its own facts, a defendant must be without fault in the delay of filing the notice of appeal. *Roberts v. State*, 854 N.E.2d 1177, 1178-79 (Ind. Ct. App. 2006), *trans. denied*. The following factors have influenced such a determination: the defendant's level of awareness of his procedural remedy, age, education, familiarity with the legal system, whether the defendant was informed of his appellate rights, and whether he committed an act or omission which contributed to the delay. *Id.* at 1179. Whether a defendant is responsible for the delay is a matter within the trial court's discretion. *Cruite v. State*, 853 N.E.2d 487, 489 (Ind. Ct. App. 2006), *trans. denied*. When the trial court holds a hearing, as in the case before us, we defer to their discretion in weighing the evidence and judging witness credibility. *See id.*

Here, Covington argues that the delay in filing his appeal is not his fault and that he has been diligent in pursuing an appeal. We disagree. The record clearly shows that Covington was given notice of his trial date and failed to appear without any explanation

or legal excuse. Instead of appearing at his trial, he ran from authorities for more than four years, during which time he did not pursue an appeal. Only Covington can be blamed for his absconding, an act which directly contributed to the delay of his appeal. Furthermore, the record indicates that Covington waited more than seven years after his apprehension to file a petition for leave to file a belated notice of appeal. There is no evidence in the record whatsoever that Covington worked diligently to pursue an appeal through any other avenue during this post-apprehension period. Thus, nearly eleven years passed between Covington's conviction and the filing of his Petition. This considerable delay was undoubtedly Covington's fault and in no way has he been diligent in seeking a direct appeal of his conviction. As a result, we conclude that the trial court properly denied his Petition.

#### CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion in denying Covington's request for leave to file a belated notice of appeal.

Affirmed.

SHARPNACK, J., and FRIEDLANDER, J., concur.