

[Cite as *State v. Albright*, 2019-Ohio-4359.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT

COUNTY OF CUYAHOGA

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 107632
 v. :
 :
 JONATHAN ALBRIGHT, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: October 22, 2019

Cuyahoga County Court of Common Pleas
Case Nos. CR-17-619330-A and CR-18-625326-A
Application for Reopening
Motion No. 531536

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Frank Romeo Zeleznikar, Assistant Prosecuting Attorney, *for appellee.*

Jonathan Albright, *pro se.*

EILEEN A. GALLAGHER, J.:

{¶ 1} Applicant, Jonathan Albright, seeks to reopen his appeal in *State v. Albright*, 8th Dist. Cuyahoga No. 107632, 2019-Ohio-1998. He claims that appellate counsel was ineffective

for not arguing that Albright's pleas were less than knowingly, intelligently and voluntarily entered when he was pressured into pleading guilty by trial counsel and trial counsel was ineffective for not arguing self-defense. The application is untimely without a showing of good cause and is, therefore, denied.

I. Factual and Procedural History

{¶ 2} Following guilty pleas in two criminal cases, Albright was convicted of voluntary manslaughter, felonious assault, having weapons while under disability and escape. He received an aggregate 23.5-year sentence. *Id.* at ¶ 11. Albright appealed, raising three assignments of error:

Assignment of Error I: The plea was not made intelligently, knowingly, and voluntarily.

Assignment of Error II: The trial court erred by sentencing Jonathan Albright separately for crimes that were allied offenses of similar import.

Assignment of Error III: The shooting was self-defense.

Id. at ¶ 12. On May 23, 2019, this court rejected the assigned errors and affirmed the convictions. *Id.* at ¶ 37. Then, on August 29, 2018, Albright filed the instant application to reopen. His application raised two proposed assignments of error:

Proposed Assignments of Error: Albright was prejudiced by appellate counsel's deficient performance when counsel failed to preserve a claim of ineffective assistance of trial counsel for (1) pressuring Albright to enter a plea bargain and (2) failing to raise a claim of self [-]defense.

The state timely opposed the application, arguing that it was untimely without a showing of good cause and pointing out that the proposed assignments of error were, in fact, raised by appellate counsel in the direct appeal.

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II. Law and Analysis

{¶ 3} App.R. 26(B) provides a limited means of asserting a claim that appellate counsel was ineffective. It provides, “A defendant in a criminal case may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel.” However, the rule provides only a 90-day window within which to assert such a claim. An application filed outside that deadline must demonstrate good cause for the delay. App.R. 26(B)(1) and 26(B)(2)(b). The Ohio Supreme Court has interpreted this as a strict deadline. *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970.

{¶ 4} Here, 98 days elapsed between the time the appellate decision was issued and the application was received for filing by the clerk. Therefore, the application is untimely and *Albright* is required to include a showing of good cause. App.R. 26(B)(2)(b). No cause justifying the delay is set forth in the application, let alone good cause. Therefore, the application is denied without addressing the proposed assignments of error. *State v. Dzelajlija*, 8th Dist. Cuyahoga No. 89912, 2018-Ohio-3953, ¶ 8, citing *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 7; *LaMar*.

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{¶ 5} Application denied.

EILEEN A. GALLAGHER, JUDGE

**EILEEN T. GALLAGHER, P.J., and
RAYMOND C. HEADEN, J., CONCUR**