

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 108725  
 v. :  
 :  
 MARK LEVERT, :  
 :  
 Defendant-Appellant. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: APPLICATION DENIED**  
**RELEASED AND JOURNALIZED: May 1, 2020**

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Cuyahoga County Court of Common Pleas  
Case Nos. CR-18-628871-A, CR-18-629765-A, and CR-18-633181-A  
Application for Reopening  
Motion No. 534317

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Gregory Ochocki, Assistant Prosecuting Attorney, *for appellee*.

Mark Levert, *pro se*.

MARY J. BOYLE, P.J.:

{¶ 1} On December 11, 2019, the applicant, Mark Levert, applied, pursuant to App.R. 26(B) and *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992), to reopen this court's judgment in *State v. Levert*, 8th Dist. Cuyahoga No. 108725

(July 9, 2019), in which this court sua sponte dismissed Levert's pro se appeal as untimely. Levert asserts that his appellate counsel should have argued that the trial court erred in denying his motion to suppress and that the trial court violated his double jeopardy rights by dismissing a case and then trying a reindictment. The state filed its brief in opposition on December 17, 2019. For the following reasons, this court denies the application to reopen.

{¶ 2} App.R. 26(B)(1) and (2)(b) require applications claiming ineffective assistance of appellate counsel to be filed within 90 days from journalization of the decision unless the applicant shows good cause for filing at a later time. The December 2019 application was filed approximately five months after this court's decision. Thus, it is untimely on its face. Levert does not proffer any cause for his untimely filing.

{¶ 3} Moreover, Levert filed his own untimely notice of appeal. Levert cannot complain in 8th Dist. Cuyahoga No. 108725, that his appellate lawyer was ineffective when he represented himself. *State v. Tyler*, 71 Ohio St.3d 398, 664 N.E.2d 298 (1995) and *State v. Patterson*, 8th Dist. Cuyahoga No. 101415, 2015-Ohio-3338.

{¶ 4} Accordingly, this court denies the application to reopen.

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MARY J. BOYLE, PRESIDING JUDGE

ANITA LASTER MAYS, J., and  
MICHELLE J. SHEEHAN, J., CONCUR