

[Cite as *State v. Jones*, 2021-Ohio-2509.]

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 108226  
 v. :  
 :  
 LEE JONES, :  
 :  
 Defendant-Appellant. :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: APPLICATION DENIED**  
**RELEASED AND JOURNALIZED: July 16, 2021**

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Cuyahoga County Court of Common Pleas  
Case No. CR-14-590112-A  
Application for Reopening  
Motion No. 547567

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***Appearances:***

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

Lee Jones, *pro se*.

SEAN C. GALLAGHER, J.:

{¶ 1} On June 25, 2021, the applicant, Lee Jones, pursuant to App.R. 26(B) and *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992), applied to reopen this court's judgment in *State v. Jones*, 8th Dist. Cuyahoga No. 108226,

2019-Ohio-4892, in which this court affirmed the denial of his second motion to withdraw his guilty plea. Jones maintains that his appellate counsel should have argued that his trial counsel was ineffective by telling Jones that the trial judge would impose a concurrent sentence. On July 9, 2021, the state of Ohio filed its brief in opposition. For the following reasons, this court denies the application.

{¶ 2} In *State v. Jones*, Cuyahoga C.P. No. CR-14-590112-A, Jones pled guilty to a single count of rape for approaching a woman on the street, striking her in the face, and dragging her around a corner to rape and further beat her. Jones had already been found delinquent and convicted of multiple counts of rape. In 2007 and 2008, he was convicted of the rapes of four different women, and the trial court imposed four consecutive, ten-year prison sentences for those crimes. For the rape in the present case, the trial judge imposed another ten-year sentence consecutive to the others. This would keep Jones in prison until he would be 79 years old.

{¶ 3} In his direct appeal, Jones's appellate counsel argued that the R.C. 2929.14 findings were not supported by the record, that the aggregate sentence violated the Eighth Amendment prohibition against cruel and unusual punishment, and that the trial court should have awarded jail-time credit for the time Jones spent in jail while serving his other sentences, but awaiting trial in the present case. This court rejected those arguments. *State v. Jones*, 8th Dist. Cuyahoga No. 104152, 2016-Ohio-8145.

{¶ 4} On November 30, 2018, Jones filed a second motion to withdraw guilty plea, which the trial court denied on December 14, 2018. This court allowed a delayed appeal in the instant matter. Jones’s appellate counsel argued, inter alia, that trial counsel’s false assurances that he would receive a concurrent sentence created a manifest injustice that should allow a withdrawal of the guilty plea.

{¶ 5} App.R. 26(B)(1) and (2) 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. This court journalized its decision on November 27, 2019, and Jones filed this application on June 25, 2021, approximately one year and seven months later. Thus, the application is untimely on its face.

{¶ 6} In an effort to show good cause, Jones argues that the Covid-19 pandemic closed the prison law library and prevented him from timely filing. This is unpersuasive, because his application was due no later than February 25, 2020, before the pandemic lockdowns. Furthermore, the “courts have repeatedly rejected the claim that limited access to legal materials states good cause for untimely filing. Prison riots, lockdowns, and other library limitations have been rejected as constituting good cause.” *State v. Porter*, 8th Dist. Cuyahoga No. 10257, 2018-Ohio-1178, ¶ 3; and *State v. Tucker*, 73 Ohio St.3d 152, 1995-Ohio-2, 652 N.E.2d 720.

{¶ 7} Jones’s claim that he has good cause because his counsel’s failure to raise a “dead bang winner” created a manifest injustice is also not well taken. This court rejected that argument in *State v. Howard*, 8th Dist. Cuyahoga No. 97695,

2016-Ohi-8298. Howard argued that it would be unjust to deny an application as untimely when a genuine issue is shown, and he cited to older case law for that proposition. This court ruled that those earlier cases are no longer reliable in light of *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, and *State v. Lamar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970. “The Supreme Court made it very clear that an applicant must show extraordinary reasons for not timely filing. The claim of a ‘dead bang winner’ is not enough.” *State v. Jeffries*, 8th Dist. Cuyahoga No. 106889, 2019-Ohio-4255, ¶ 18; *Porter*, 2018-Ohio-1178, and *State v. Willis*, 8th Dist. Cuyahoga No. 101052, 2018-Ohio-159.

{¶ 8} App.R. 26(B)(1) provides in pertinent part: “A defendant in a criminal case may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim on ineffective assistance of appellate counsel.” This application is not really an effort to reopen the appeal of a conviction and sentence. It is an effort to reopen the appeal of a denial of a post-sentence motion to withdraw guilty plea. In *State v. Halliwell*, 8th Dist. Cuyahoga No. 70369, 1999 Ohio App. LEXIS 285 (Jan. 28, 1999), this court ruled that App.R. 26(B) does not apply to appeals from an adverse ruling on a motion to vacate a guilty plea. *State v. Woody*, 8th Dist. Cuyahoga No., 92929, 2010-Ohio-3307; and *State v. Loomer*, 76 Ohio St.3d 398, 667 N.E.2d 1209 (1996). This provides another independent reason to deny the application.

{¶ 9} Accordingly, this court denies the application.

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SEAN C. GALLAGHER, JUDGE

MARY J. BOYLE, A.J., and  
ANITA LASTER MAYS, J., CONCUR