

[Cite as *State v. Newman*, 2021-Ohio-1293.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 109182
 v. :
 :
 DAZELLE NEWMAN, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: April 12, 2021

Cuyahoga County Court of Common Pleas
Case No. CR-17-620465-A
Application for Reopening
Motion No. 544991

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Tasha L. Forchione, Assistant Prosecuting Attorney, *for appellee*.

Dazelle Newman, *pro se*.

LARRY A. JONES, SR., J.:

{¶ 1} On March 16, 2021, the applicant, Dazelle Newman, pursuant to App.R. 26(B) and *State v. Murnahan*, 62 Ohio St.3d 60, 584 N.E.2d 1204 (1992), applied to reopen this court's judgment in *State v. Newman*, 8th Dist. Cuyahoga No.

109182, 2020-Ohio-5087,¹ in which this court affirmed Newman's convictions for attempted murder, kidnapping, aggravated robbery, aggravated burglary, grand theft, aggravated menacing, having weapons while under disability, and criminal damaging.² Newman now argues that his appellate counsel should have raised the following issues. (1) The trial court erred in proceeding to trial without holding a hearing or obtaining an evaluation as to Newman's competency to represent himself. (2) There was insufficient evidence to convict Newman of attempted murder; the evidence could only allow simple assault and vehicular assault. (3) The kidnapping convictions were not supported by sufficient evidence and were against the manifest weight of the evidence. (4) His convictions generally were not supported by sufficient evidence and were against the manifest weight of the evidence. (5) His convictions were the result of police and prosecutorial misconduct. (6) The trial judge had predetermined Newman's guilt. (7) The photo lineup was unduly suggestive.³ 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

¹ This court granted Newman a delayed appeal in 8th Dist. Cuyahoga No. 109182.

² This court notes that in a bench trial, the judge dismissed 15 counts and found Newman not guilty on two other counts.

³ Newman's appellate counsel argued the following assignments of error: (1) The trial court committed error when it abused its discretion by permitting a likely incompetent person to be a pro se litigant and (2) Newman's convictions are against the manifest weight of the evidence.

March 16, 2021, application was filed approximately 140 days after this court's October 29, 2020 decision. Thus, it is untimely on its face. Newman does not proffer good cause, but states in the first paragraph of his application that this motion is being made within 90 days of the October 29, 2020 decision in *State v. Newman*.⁴ This is insufficient to provide good cause.

{¶ 3} Moreover, the Supreme Court of Ohio in *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970, and *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, held that the 90-day deadline for filing must be strictly enforced. In those cases, the applicants argued that after the court of appeals decided their cases, their appellate lawyers continued to represent them, and their appellate lawyers could not be expected to raise their own incompetence. Although the Supreme Court agreed with this latter principle, it rejected the argument that continued representation provided good cause. In both cases, the court ruled that the applicants could not ignore the 90-day deadline, even if it meant retaining new counsel or filing the applications themselves. The court then reaffirmed the principle that lack of effort, lack of imagination, and ignorance of the law do not establish good cause for failure to seek timely relief under App.R. 26(B). Accordingly, this court denies the application as untimely.

{¶ 4} Moreover, Newman's application consists of 71 pages of single-spaced hand-printed pages. Thus, it exceeds the ten-page limit established by App.R.

⁴ This court notes that the envelope in which the application came is postmarked March 11, 2021.

26(B)(4). This defect provides another independent reason for dismissing the application. *State v. Peeples*, 71 Ohio St.3d 349, 652 N.E.2d 717 (1994), and *State v. Stadmire*, 8th Dist. Cuyahoga No. 88735, 2011-Ohio-921.

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

LARRY A. JONES, SR., JUDGE

FRANK D. CELEBREZZE, JR., P.J., and
LISA B. FORBES, J., CONCUR