

[Cite as *State v. Jones*, 2018-Ohio-4850.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION  
No. 106027

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**RAFIQ M. JONES**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
APPLICATION DENIED

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Cuyahoga County Court of Common Pleas  
Case No. CR-16-610785-A  
Application for Reopening  
Motion No. 522158

**RELEASE DATE:** December 4, 2018

## **FOR APPELLANT**

Rafiq Jones, pro se  
Inmate No. 700587  
Belmont Correctional Institution  
68518 Bannock Road  
St. Clairsville, Ohio 43950

## **ATTORNEYS FOR APPELLEE**

Michael C. O'Malley  
Cuyahoga County Prosecutor  
By: Anthony T. Miranda  
Assistant County Prosecutor  
Justice Center, 9th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

LARRY A. JONES, SR., J.:

{¶1} Applicant, Rafiq M. Jones, seeks to reopen his appeal pursuant to App.R. 26(B), arguing that appellate counsel was ineffective in failing to advance four proposed assignments of error. Because Jones has not shown good cause for his untimely application, it is denied.

{¶2} On May 24, 2018, this court issued the decision in Jones's direct appeal. *State v. Jones*, 8th Dist. Cuyahoga No. 106027, 2018-Ohio-2055. Therein, Jones raised four assignments of error:

I. The trial court committed prejudicial error by not conducting a hearing on appellant's pre-sentencing motion to withdraw guilty pleas.

II. The trial court committed prejudicial error by denying appellant's pre-sentencing motion to withdraw guilty pleas.

III. Appellant's guilty pleas must be vacated because they were not made knowingly, intelligently, and voluntarily.

IV. Appellant's conviction and sentence for aggravated robbery, as charged in amended Count III of the indictment, should be vacated and set aside because Count III, in both the original indictment and the amended indictment, is defective

and fails to charge an offense under Ohio law because no person was named as the alleged victim.

This court affirmed Jones's convictions for rape and aggravated robbery. *Id.* at \_ 43.

{¶3} Jones appealed this court's decision to the Ohio Supreme Court, which declined jurisdiction. *State v. Jones*, 153 Ohio St.3d 1469, 2018-Ohio-3450, 106 N.E.3d 66.

Approximately one month after the Ohio Supreme Court declined jurisdiction, on October 18, 2018, Jones filed the instant application for reopening, asserting four proposed assignments of error:

I. Defendant's rights to the effective assistance of trial counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §10 of the Ohio Constitution were violated.

II. The trial court abused its discretion when it did not issue a ruling on the Defendant's Motion to Dismiss the Indictment on grounds of preindictment delay.

III. The trial court abused its discretion when it asked the Defendant to provide a sound legal reason for withdrawing his plea and Defendant responded that he did not commit the crime, this would satisfy an actual innocence claim and satisfy the Court's request.

IV. The trial court abused its discretion when it placed undue pressure on the Defendant to accept the plea when it compared the threat of an exceptionally long prison sentence with that of a lenient plea bargain sentence.

{¶4} App.R. 26(B) provides a criminal defendant with the means of asserting a claim that appellate counsel was ineffective, and an opportunity to have prejudicial errors addressed that were not raised by appellate counsel. The rule 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. An application for reopening shall be filed in the court of

appeals where the appeal was decided within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time.

App.R. 26(B).

{¶5} As the rule states, a strict deadline of 90 days exists in which the application must be filed. *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970; *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861. Otherwise, the applicant must demonstrate good cause for untimeliness. *Id.*

{¶6} Here, Jones does not advance any reason why his application was not timely filed. He gets close to advancing arguments going to good cause when he asserts that he was concentrating on filing an appeal to the Ohio Supreme Court following this court's decision in his direct appeal. His application states,

[f]or good cause, the [a]ppellant asserts that he timely appealed this to the Supreme Court of Ohio in SCO [sic] Case No. 18-0947, which declined to issue jurisdiction on August 29, 2018. In the initial appeal appellate counsel did address four assignments of error, which had extreme merit. Appellant anticipated that the SCO [sic] would accept jurisdiction and consider the merits of those errors and reverse the COA [sic] decision of May 24, 2018.

However, pursuing an appeal to the Ohio Supreme Court does not constitute good cause for the untimely filing of an application to reopen. *State v. Hornack*, 8th Dist. Cuyahoga No. 81021, 2005-Ohio-5843, citing *Gumm* and *LaMar* at

\_ 8; *State v. Orr*, 8th Dist. Cuyahoga No. 96377, 2014-Ohio-2384, \_ 7, citing *Gumm* at \_ 3.

{¶7} Jones further argues that his application was filed only 49 days late, a de minimis violation of the rule. However, this court has found that the filing of an application on the 91st day constitutes an untimely filed application that requires a showing of good cause. *State v.*

*Agosto*, 8th Dist. Cuyahoga No. 87283, 2007-Ohio-848, \_\_ 2-3, citing *Gumm* at \_\_ 7; *LaMar* at \_\_ 7.

Jones filed his application outside of the period specified in the rule. This requires him to show good cause why he could not file the application within the period provided for by App.R. 26(B).

{¶8} Here, Jones has not shown why his application could not be filed in a timely fashion, or why this court should excuse the untimely filing. Further, the failure to show good cause is sufficient grounds to deny the application without addressing the merits of the claim. *State v. Woods*, 8th Dist. Cuyahoga No. 82789, 2014-Ohio-296, ¶ 4, citing *State v. McNeal*, 8th Dist. Cuyahoga No. 91507, 2009-Ohio-6453, ¶ 4. Therefore, his application must be denied.

{¶9} Application denied.

LARRY A. JONES, SR., JUDGE

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MARY EILEEN KILBANE, P.J., and  
MELODY J. STEWART, J., CONCUR