

[Cite as *State v. Marshall*, 2019-Ohio-1114.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION  
No. 87334

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**WILLIAM MARSHALL**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
APPLICATION DENIED

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Cuyahoga County Court of Common Pleas  
Case No. CR-05-463504-F  
Application for Reopening  
Motion No. 526040

**RELEASE DATE:** March 26, 2019

## **FOR APPELLANT**

William Marshall, pro se  
Inmate No. 493725  
London Correctional Institution  
P.O. Box 69  
London, Ohio 43140

## **ATTORNEYS FOR APPELLEE**

Michael C. O'Malley  
Cuyahoga County Prosecutor  
By: Christopher D. Schroeder  
Assistant County Prosecutor  
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SEAN C. GALLAGHER, P.J.:

{¶1} On February 26, 2019, the applicant, William Marshall, 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. Marshall*, 8th Dist. Cuyahoga No. 87334, 2006-Ohio-6271, in which this court affirmed his convictions for three counts of aggravated robbery, two counts of murder, one count of aggravated burglary, all with firearm specifications, and one count of having a weapon while under disability, but vacated the sentence and remanded for resentencing because of errors in imposing consecutive sentences and because the state's sentencing scheme had been declared unconstitutional. Marshall now argues that his appellate counsel was ineffective for not arguing that the state did not prove guilt beyond a reasonable doubt because it did not prove the elemental difference between felony-murder and involuntary manslaughter. On March 4, 2019, the state

of Ohio filed its brief in opposition. 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 February 2019 application was filed more than twelve years after this court's decision. Thus, it is untimely on its face. In an effort to establish good cause, Marshall argues that his appellate counsel was ineffective for failing to inform him of App.R. 26(B) and that he was unaware of this remedy.

{¶3} It is well established that reliance on counsel and counsel's failure to inform an applicant of App.R. 26(B) do not establish good cause for filing an untimely application to reopen. *State v. Pruitt*, 8th Dist. Cuyahoga Nos. 86707 and 86986, 2006-Ohio-4106, *reopening disallowed*, 2012-Ohio-94; *State v. Alt*, 8th Dist. Cuyahoga No. 96289, 2011-Ohio-5393, *reopening disallowed*, 2012-Ohio-2054; and *State v. Mitchell*, 8th Dist. Cuyahoga No. 88977, 2007-Ohio-6190, *reopening disallowed*, 2009-Ohio-1874.

{¶4} The courts have consistently ruled that ignorance of the law does not provide sufficient cause for untimely filing. *State v. Klein*, 8th Dist. Cuyahoga No. 58389, 1991 Ohio App. LEXIS 1346, *reopening disallowed* (Mar. 15, 1994), Motion No. 249260, *aff'd*, 69 Ohio St.3d 1481, 634 N.E.2d 1027 (1994), and *State v. Barnes*, 8th Dist. Cuyahoga No. 94025, 2010-Ohio-4674, *reopening disallowed*, 2011-Ohio-1916.

{¶5} Moreover, these excuses do not explain the lapse of more than 12 years. In *State v. Davis*, 86 Ohio St.3d 212, 214, 1999-Ohio-160, 714 N.E.2d 384, the Supreme Court of Ohio addressed a similar long lapse of time in filing the App.R. 26(B) application and ruled: "Even

if we were to find good cause of earlier failures to file, any such good cause ‘has long since evaporated. Good cause can excuse the lack of a filing only while it exists, not for an indefinite period.’ *State v. Fox*, 83 Ohio St.3d 514, 516, 1998-Ohio-517, 700 N.E.2d 1253, 1254.”

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

SEAN C. GALLAGHER, PRESIDING JUDGE

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LARRY A. JONES, SR., J., and  
KATHLEEN ANN KEOUGH, J., CONCUR