

[Cite as *State v. Hundley*, 2019-Ohio-526.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION  
No. 106235

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**CHARLES C. HUNDLEY**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
APPLICATION DENIED

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Cuyahoga County Court of Common Pleas  
Case No. CR-17-612938-A  
Application for Reopening  
Motion No. 523678

**RELEASE DATE:** February 8, 2019

## **FOR APPELLANT**

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## **ATTORNEYS FOR APPELLEE**

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ANITA LASTER MAYS, J.:

{¶1} Applicant, Charles Hundley, seeks to reopen his appeal in *State v. Hundley*, 8th Dist. Cuyahoga No. 106235, 2018-Ohio-3566. He claims that appellate counsel was ineffective for failing to raise a “dead bang winner” regarding firearm ballistic evidence. The application for reopening is untimely without good cause shown, and is therefore denied.

### **I. Background**

{¶2} Hundley was convicted of numerous charges related to the murder of Gregory Clark. On appeal, Hundley’s appellate counsel raised assignments of error related to hearsay testimony, manifest weight, and ineffective assistance of trial counsel. *Id.* at \_ 23. Those assigned errors were overruled, and Hundley’s convictions and sentences were affirmed. *Id.* at \_ 53.

{¶3} On December 10, 2018, Hundley filed the instant application to reopen his appeal pursuant to App.R. 26(B). The state timely filed its opposition.

## **II. Law and Analysis**

### **A. Timeliness**

{¶4} App.R. 26(B) provides a process for an individual to seek reopening of an appeal based on ineffective assistance of appellate counsel. Such claims must be brought, according to the rule, within 90 days of the date of journalization of the appellate decision. App.R. 26(B)(1).

Failure to meet that deadline requires a showing of good cause for the untimely filing before the claims raised in the application may be addressed. App.R. 26(B)(2)(b); *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 7-8, ¶ 10; *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970. This deadline must be strictly enforced. *State v. Nitsche*, 8th Dist. Cuyahoga No. 103174, 2017-Ohio-529, ¶ 4.

{¶5} As the rule specifies, the application must be filed within 90 days. The appellate decision in this case was journalized on September 6, 2018. Hundley filed the present application on December 10, 2018. The application is therefore untimely as it was filed with the clerk on the 95th day. A showing of good cause is required.

{¶6} In the application, Hundley asserts that it was timely filed. As such, he does not argue good cause for the untimely filing. Hundley may wrongly assume that mailing the application within 90 days is sufficient. This court has previously rejected such a claim and found that this did not constitute good cause for untimely filing. *Id.* at \_ 6. *See also State v. Winstead*, 74 Ohio St.3d 277, 658 N.E.2d 722 (1996); *State v. Harris*, 8th Dist. Cuyahoga No. 104329, 2018-Ohio-839, ¶ 4. Hundley's application is untimely without a showing of good cause. It, therefore, must be denied.

## **B. Arguments Previously Addressed on Appeal**

{¶7} Even if the application was timely filed, it fails to satisfy the requirements for reopening.

{¶8} An application for reopening must include, among other things, “[o]ne or more assignments of error or arguments in support of assignments of error that previously were not considered on the merits in the case by any appellate court or that were considered on an incomplete record because of appellate counsel’s deficient representation[.]” App.R. 26(B)(2)(c).

{¶9} Appellant’s brief in his direct appeal, filed January 16, 2018, at pages 16 through 19, did highlight the fact that no ballistic evidence was offered to demonstrate that the bullet that killed Clark was fired from a specific gun. This was made in the context of the assignment of error addressing the manifest weight of the evidence. Hundley’s application for reopening asserts that appellate counsel was ineffective for not arguing that “there was no ballistic evidence done on either firearm” recovered from the scene of the murder. Appellant’s counsel argued that exact point at page 16 of appellant’s brief in the direct appeal.

{¶10} The issues Hundley raises in his application were previously raised on appeal. “App.R. 26(B)(2)(c) and (d) should make it obvious that the rule is also not an invitation to raise old issues previously adjudicated.” *State v. Lechner*, 72 Ohio St.3d 374, 375, 650 N.E.2d 449 (1995).

{¶11} Application denied.

ANITA LASTER MAYS, JUDGE

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SEAN C. GALLAGHER, P.J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR