

[Cite as *State v. Jordan*, 2015-Ohio-4977.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 73453

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHRISTOPHER JORDAN

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-346391
Application for Reopening
Motion No. 487891

RELEASE DATE: December 1, 2015

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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ANITA LASTER MAYS, J.:

{¶1} On August 3, 2015, the applicant, Christopher Jordan, pursuant to App.R. 26(B), applied to reopen this court's judgment in *State v. Jordan*, 8th Dist. Cuyahoga No. 73453, 1999 Ohio App. LEXIS 1956 (Apr. 29, 1999), in which this court affirmed Jordan's convictions for aggravated murder and having a weapon while under disability, but reversed and remanded with instructions to merge the aggravated robbery and aggravated murder convictions. Jordan asserts that his appellate counsel was ineffective because he should have argued, inter alia, (1) cumulative error denied him a fair trial, (2) the trial court did not make the necessary statutory findings to impose maximum sentences, (3) there was insufficient evidence to support a conviction for aggravated murder, (4) relevant evidence was excluded, (5) the trial court improperly limited cross-examination of witnesses, and (6) the trial court erred in allowing evidence of a prior conviction of Jordan. The state filed its brief in opposition on August 19, 2015. 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 August 2015 application was filed more than sixteen years after this court's decision. Thus, it is untimely on its face.

{¶3} In an effort to establish good cause, Jordan claims actual innocence. He relies upon two United States Supreme Court cases, *Schlup v. Delo*, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995), and *Murray v. Carrier*, 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986). These two cases hold that in an extraordinary case, a showing of innocence would allow a federal court to issue a federal writ of habeas corpus even in the absence of a showing of cause for a procedural default, which would ordinarily cause the writ to be denied. However, Jordan cites no authority for the proposition that this federal habeas corpus principle applies to an Ohio App.R. 26(B) application to reopen for a claim of ineffective assistance of appellate counsel.

{¶4} More importantly, the bare allegations in his affidavit that he is innocent and that his codefendant and another witness perjured themselves do not demonstrate that this is the extraordinary case in which actual innocence has been so shown that it would establish good cause for untimely filing. Multiple witnesses testified at trial that Jordan saw the victim display a large amount of money while at a bar. Jordan admitted he was at the bar that night. Witnesses testified that Jordan gave his firearm to another person who shot and robbed the victim. Other witnesses testified that Jordan made incriminating statements that he participated in the robbery and murder. A search of Jordan's residence uncovered several live rounds for a nine millimeter firearm, the same type that killed the victim. Indeed, this court concluded that there was overwhelming evidence of Jordan's guilt. The court further notes that Jordan's appellate counsel raised many of the errors that Jordan lists, including there was insufficient evidence of the intent

to kill, the state did not disclose a potential witness, the trial court improperly allowed the state to reopen its case to introduce evidence of a prior conviction, and the trial court erred in denying Jordan's motion for a separate trial. In summary, this is not the "extraordinary case" in which a claim of actual innocence establishes good cause.

{¶5} To the extent that Jordan claims that lack of a record states good cause, his argument is unpersuasive. Lack of a transcript does not state good cause for an untimely filing. *State v. Lawson*, 8th Dist. Cuyahoga No. 84402, 2005-Ohio-880, *reopening disallowed*, 2006-Ohio-3839; and *State v. Houston* 8th Dist. Cuyahoga No. 64574, 1994 Ohio App. LEXIS 52, *reopening disallowed*, (Feb. 15, 1995), Motion No. 259344, *aff'd* 73 Ohio St.3d 346, 652 N.E.2d 1018 (1995).

{¶6} Finally, Jordan does not explain the lapse of sixteen 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."

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

ANITA LASTER MAYS, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and

PATRICIA ANN BLACKMON, J., CONCUR