

[Cite as *State v. Scott*, 2018-Ohio-160.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103696

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LUGENE L. SCOTT

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-14-582577-A
Application for Reopening
Motion No. 512997

RELEASE DATE: January 17, 2017

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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Cuyahoga County Prosecutor
By: Mahmoud S. Awadallah
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ANITA LASTER MAYS, J.:

{¶1} On December 15, 2017, the applicant, Lugene Scott, 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. Scott*, 8th Dist. Cuyahoga No. 103696, 2016-Ohio-5929, in which this court affirmed Scott's conviction for voluntary manslaughter, vacated his two-year sentence for having a weapon while under disability, and remanded the case for proceedings consistent with the opinion. Scott now maintains that his appellate counsel was ineffective for not arguing that he should have received five years jail-time credit toward his ten-year sentence for voluntary manslaughter. Sua sponte, for the following reasons, this court denies the application.

{¶2} In 2007, Scott was charged with shooting Damien Taylor and Donnie Davidson. Taylor was paralyzed as a result of the shooting. In *State v. Scott*, Cuyahoga C.P. No. CR-07-499259-A, the trial court found Scott guilty of aggravated assault of Davidson, felonious assault of Taylor, and having a weapon while under disability and sentenced him to one year for aggravated assault, five years for felonious assault, and three years for the weapons charge, all to be run consecutively.

{¶3} When Taylor died in 2013, from complications from the 2007 gunshot, the coroner ruled the death a homicide. The state of Ohio charged Scott with aggravated murder, felonious assault, and having a weapon while under disability. Pursuant to a plea agreement, Scott pleaded guilty to voluntary manslaughter and heaving a weapon

while under disability, and the judge sentenced him to ten years for voluntary manslaughter consecutive to two years for the weapons charge.

{¶4} In a September 22, 2016 opinion, this court ruled the sentence for the weapons charge violated double jeopardy and had to be vacated. This court rejected the other arguments that double jeopardy also barred the prosecution for voluntary manslaughter and that the second case should have been assigned to the judge that heard the original case.

{¶5} Scott now claims that his appellate counsel should have argued that he was entitled to five years credit for the time sentenced on the felonious assault charge toward the time imposed for the voluntary manslaughter.

{¶6} 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 December 2017 application was filed approximately one year and three months after this court's decision. Thus, it is untimely on its face. In an effort to establish good cause, Scott argues that his appellate counsel did not inform him of the 90-day deadline for filing pursuant to App.R. 26(B) and did not send him the transcripts.

{¶7} This court has repeatedly ruled that 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; *State v. Blackmon* 8th Dist. Cuyahoga No. 48787, 1985 Ohio App.LEXIS 6810 (July 18, 1985), *reopening*

disallowed, 2000 Ohio App. LEXIS 6080 (Oct. 25, 2000), Motion No. 318768; *State v. Houston*, 8th Dist. Cuyahoga No. 64574, 1994 Ohio App. LEXIS 52 (Jan. 13, 1994), *reopening disallowed* (Feb. 15, 1995), Motion No. 259344, *aff'd*, 73 Ohio St.3d 346, 652 N.E.2d 1018 (1985).

{¶8} In *State v. Lamar*, 8th Dist. Cuyahoga No. 49551, 1985 Ohio App. LEXIS 7284 (Oct. 15, 1985), *reopening disallowed* (Nov. 15, 1995), Motion No. 263398, this court held that lack of communication with appellate counsel did not show good cause. Similarly, in *State v. White*, 8th Dist. Cuyahoga No. 57944, 1991 Ohio App. LEXIS 357 (Jan. 31, 1991), *reopening disallowed* (Oct. 19, 1994), Motion No. 249174, *aff'd*, 72 Ohio St.3d 91, 647 N.E.2d 787 (1995), and *State v. Allen*, 8th Dist. Cuyahoga No. 65806, 1994 Ohio App. LEXIS 4956 (Nov. 3, 1994), *reopening disallowed* (July 8, 1996), Motion No. 267054, this court rejected reliance on counsel as showing good cause. In *State v. Rios*, 75 Ohio App.3d 288, 599 N.E.2d 374 (8th Dist.1991), *reopening disallowed* (Sept. 18, 1995), Motion No. 266129, Rios maintained that the untimely filing of his application for reopening was primarily caused by the ineffective assistance of appellate counsel; again, this court rejected that excuse. Moreover, the courts have consistently ruled that lack of knowledge or ignorance of the law does not provide sufficient cause for untimely filing. *State v. Klein*, 8th Dist. Cuyahoga No. 58389, 1991 WL 41746 (Apr. 8, 1991), *reopening disallowed*, Motion No. 249260 (Mar. 15, 1994), *aff'd*, 69 Ohio St.3d 1481 (1994); *State v. Trammell*, 8th Dist. Cuyahoga No. 67834, 1995 WL 415171 (July 24, 1995), *reopening disallowed*, Motion No. 270493 (Apr. 22, 1996).

{¶9} Scott's excuses do not state good cause.

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

ANITA LASTER MAYS, JUDGE

SEAN C. GALLAGHER, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR