[Cite as *State v. Van Horn*, 2021-Ohio-4129.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 98751
v.	:	
JADELL VAN HORN,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: November 12, 2021

Cuyahoga County Court of Common Pleas
Case No. CR-551978
Application for Reopening
Motion No. 548499

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Daniel T. Van, Assistant Prosecuting Attorney, *for appellee*.

Patituce & Associates, LLC, Megan M. Patituce, and Joseph C. Patituce, *for appellant*.

MARY EILEEN KILBANE, J.:

{¶ 1} On August 10, 2021, the applicant, Jadell Van Horn, pursuant to App.R. 26(B), applied to reopen this court's judgment in *State v. Van Horn*, 8th

Dist. Cuyahoga No. 98751, 2013-Ohio-1986, in which this court affirmed his convictions and sentences for aggravated murder, aggravated burglary, aggravated robbery, and kidnapping in *State v. Van Horn*, Cuyahoga C.P. No. CR-11-551978-B. He now proposes that his appellate counsel was ineffective for not arguing that his Fourth and Sixth Amendment rights were violated because he was not properly advised of the effects of a guilty plea as it relates to the foreclosure of appellate challenges. On October 8, 2021, the state of Ohio filed a brief in opposition. For the following reasons, this court denies the application to reopen.

{¶ 2} On March 7, 2011, Van Horn and five other individuals went to the home of Navario Banks. While Van Horn held Banks at gunpoint, his accomplices looted the home. Van Horn then killed Banks by shooting him in the head.

{¶ 3} The police obtained Banks's cell phone records and learned that Banks's last call was to Van Horn. When the police questioned Van Horn, he implicated himself. The police then obtained a search warrant for Van Horn's cell phone records and determined his location at the time Banks was attacked. For the murder of Banks, the grand jury indicted Van Horn for four counts of aggravated murder, two counts of aggravated robbery, two counts of aggravated burglary, and kidnapping along with three- and one-year firearm specifications and repeat violent offender specifications.

{¶ 4} Van Horn's trial attorney moved to suppress the cell phone records. When the trial court denied the motion, Van Horn entered into a plea agreement

and pled guilty to all charges. After merging various offenses, the trial court sentenced him to 33 years to life.

{¶ 5} Van Horn's appellate counsel argued the following: (1) the guilty pleas were not entered knowingly, intelligently, and voluntarily because the trial court failed to advise him of the maximum penalties associated with his guilty pleas; (2) the charges for aggravated robbery and aggravated burglary should have merged as allied offenses and should also have merged with aggravated murder; (3) Van Horn's sentence was contrary to law and disproportional to the sentences received by the codefendant; and (4) the trial court did not make the proper findings for consecutive sentences.

{¶ 6} Van Horn now claims that his appellate counsel should have argued that his Fourth and Sixth Amendment rights were violated when he was not properly advised that by pleading guilty he was forfeiting appellate rights. Specifically, by pleading guilty, as compared to no contest, he lost his ability to challenge the denial of the motion to suppress. Additionally, his trial counsel was ineffective for advising him to plead guilty to all charges, because he received nothing in return for his guilty plea.

{¶ 7} App.R. 26(B)(1) and (2) require applications claiming ineffective assistance of appellate counsel to be filed within 90 days from journalization unless the applicant shows good cause for filing at a later time. In the present case, this court issued its decision on May 16, 2013, more than eight years before the filing of this application. Thus, it is untimely on its face.

{¶ 8} In an effort to show good cause, Van Horn proffers that he was unaware of the appellate rights he had relinquished and what remedies were available to him. Furthermore, he was not made aware of the deadlines or requirements relevant to the preservation of his constitutional rights and his appellate remedies.

{¶ 9} 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 of filing an untimely application to reopen. *State v. Pruitt*, 8th Dist. Cuyahoga Nos. 86707 and 86986 2012-Ohio-94; *State v. Alt*, 8th Dist. Cuyahoga No. 96289, 2012-Ohio-2054; and *State v. Marshall,* 8th Dist. Cuyahoga No. 87334, 2019-Ohio-1114.

{¶ 10} 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 (Mar. 28, 1991), *reopening disallowed* (Mar. 15, 1994), Motion No. 249260, *aff'd*, 69 Ohio St.3d 1481, 634 N.E.2d 1027 (1994); *State v. Opalach*, 8th Dist. Cuyahoga No. 85540, 2014-Ohio-4922; and *State v. Lenhart*, 8th Dist. Cuyahoga No. 99993, 2015-Ohio-1945.

{¶ 11} Moreover, these excuses do not explain the lapse of more than eight 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 failure 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, 700 N.E.2d 1253, 1254."

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

MARY EILEEN KILBANE, JUDGE

EILEEN A. GALLAGHER, P.J., and
MICHELLE J. SHEEHAN, J., CONCUR