

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

VS.

James SIMPSON,

Defendant-Appellant.

12-0962  
Case No. 27266

On Appeal from the MONTGOMERY  
County Court of Appeals  
SECOND Appellate District

C.A. Case No. 08-CR-2913

MOTION FOR LEAVE TO FILE DELAYED APPEAL OF  
APPELLANT James SIMPSON

James SIMPSON #636-575  
NAME AND NUMBER  
Toledo, CORRECTIONAL, INST  
INSTITUTION  
2001 E. CENTRAL ave  
ADDRESS  
Toledo, OH, 43608  
CITY, STATE & ZIP  
PHONE

DEFENDANT-APPELLANT, PRO SE

MATTHIAS H. HECK, JR  
PROSECUTOR NAME  
P.O. Box 972  
ADDRESS  
DAYTON, OH, 45422  
CITY, STATE & ZIP  
PHONE

COUNSEL FOR APPELLEE, STATE OF OHIO

FILED  
JUN 05 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

RECEIVED  
APR 17 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

STATE OF OHIO.

PLAINTIFF-APPELLEE.

VS.

JAMES SIMPSON

DEFENDANT-APPELLANT.

CASE NO. 24266

ON APPEAL FROM THE MONTEGOMERY

COUNTY COURT OF APPENS

SECOND APPELLATE DISTRICT

C. A. CASE NO. 08-CR-2913

MOTION FOR LEAVE TO FILE DELAYED APPEAL OF  
APPELLANT JAMES SIMPSON

I, JAMES SIMPSON RESPECTFULLY MOVES THIS COURT FOR LEAVE TO FILE A DELAYED APPEAL.

S.C.T. PRAC. RULE 2.2(A)(4)(A). I, JAMES SIMPSON ON 5-20-10 ACCEPTED A PLEA OFFER OF 15 YRS TO LIFE.  
"AT THE CHANGE OF PLEA HEARING", IT WAS BROUGHT TO MY ATTENTION THAT MY ATTORNEY MR. LIEBERMAN WAS  
FRIENDS WITH THE VICTIMS BROTHER, IN FACT COACH'D A PEE-WEE FOOTBALL TEAM TOGETHER.  
NOT KNOWING WHAT THE PERSONAL CONFLICT OF INTEREST MEANT OR THE EFFECT IT HAD ON MY CASE.  
NOR DID MY ATTORNEY MR. LIEBERMAN TAKE THE TIME TO EXPLAIN IT TO ME. I WAS LED BY MR.  
LIEBERMAN, TO BELIEVE THAT I HAD EXHAUSTED ALL OF MY OPTIONS, AND THAT BEING THAT IT  
WOULD BE AN ALL WHITE JURY, I WOULD BE FOUND GUILTY. SO I ACCEPTED THE PLEA OFFER.  
ONCE I WAS ABLE TO TALK TO OTHER PEOPLE ABOUT MY COURT HEARING, IT WAS EXPLAIN'D TO ME  
THE NATURE OF THE CONFLICT OF INTEREST. I WROTE JUDGE; A. J. WAGNER, A LETTER ON  
5-21-10, WITH (3) REASONS WHY I WAS REQUESTING TO BE ALLOW'D TO WITHDRAW MY PLEA.  
MY REQUEST WAS DENIED BECAUSE MY NEW ATTORNEY: MR. DAVID E. STENSON DID NOT  
RAISE THE PERSONAL CONFLICT OF INTEREST IN HIS MOTION TO WITHDRAW/. SEE LETTERS...

ON 9-15-10 I FILE'D A TIMELY NOTICE OF APPEAL WITH THE SECOND DISTRICT COURT OF APPEALS. THAT WAS DENIED ON 12-2-11 WHICH I RECEIVED ON 12-8-11, THAT LEFT ME WITH LESS THAN 30 DAYS TO FILE MY "APPEAL FOR RECONSIDERATION." I DIDN'T KNOW I WAS SUPPOSE TO FILE A NOTICE OF APPEAL WITH THE SUPREME COURTS AT THAT TIME. ON 2-3-12 MY MOTION FOR RECONSIDERATION WAS DENIED. I TRIED TO FILE A NOTICE OF APPEAL TIMELY, WITH THE SUPREME COURTS OF OHIO, BUT I SENT IT TO THE WRONG COURTS SINCE THEN I'VE BEEN DESPERATELY TRYING TO FILE MY DELAYED APPEAL RIGHT WITH THIS HONORABLE COURTS. I'M INDIGENT AND ONLY RECEIVE 15 DOLLARS A MONTH FROM WORKING AT THE PRISON. 5 DOLLARS FROM MY PAY IS BEING EARNISH'D FOR COURT COSTS. I'VE BEEN HAVING TO WAIT TO RECEIVE MY STATE PAY, JUST TO TRY PROPERLY FILING THIS DELAYED APPEAL.

AN AFFIDAVIT SUPPORTING THE APPELLANT'S ALLEGATIONS IS ATTACHED HERETO. BECAUSE THE APPELLANT DID NOT UNDULY DELAY THE FILING OF THIS APPEAL. THIS COURT SHOULD PERMIT THE APPELLANT TO FILE A DELAYED APPEAL.

RESPECTFULLY SUBMITTED,

JAMES A. SIMPSON #636575  
James Simpson

NAME AND ADDRESS

Toledo CORRECTIONAL INST

2001 E. CENTRAL AVE

Toledo, OHIO, 43608

DEFENDANT - APPELLANT, PRO SE

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion For Leave to File Delayed Appeal was forwarded by regular U.S. Mail to MATHIAS H. HECK, JR, Prosecuting Attorney P.O. BOX 972, DAYTON, OHIO, 45422, on MARCH-8-2012.

James Simpson  
SIGNATURE

James SIMPSON # 636-575  
NAME AND NUMBER

DEFENDANT-APPELLANT, **PRO SE**

AFFIDAVIT

State of Ohio )  
 ) ss:  
County of MONTGOMERY )

I, JAMES SIMPSON, swear that the following is true:

- I found out I lost my appeal on 12-8-2011
- Being that I did not receive the three judges decision that was rendered on 12-2-2011 till 12-8-2011 I was left with four days to file a motion for reconsideration, also I was left with not 45 days to file an appeal with the Supreme Courts of Ohio, but only 39 days, in which I did so but not correctly. Please see attach documents
- I did not find out that the second district court of appeals did not accept my motion for reconsideration which was 2 days late of the 12-12-2011 dead line, which was time stamped on 12-14-2011 until I sought counsel from the Ohio Public Defenders Office, that I received on 2-9-2012. Please see attached documents.

James Simpson 636-575  
NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

Sworn to and subscribed in my presence this 8 day of MARCH 2012,

20 12.

[Signature]  
NOTARY PUBLIC



Sonya Lynn Quaintance  
Notary Public, State of Ohio  
Commission Expires 1-15-15



Sonya Lynn Quaintance  
Notary Public, State of Ohio  
Commission Expires 1-15-15

FILED  
COURT OF APPEALS

2012 FEB -3 PM 1:42

GREGORY A. WUSH  
CLERK OF COURTS  
MONTGOMERY CO. OHIO  
36

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

JAMES SIMPSON

Defendant-Appellant

: Appellate Case No. 24266  
:  
: Trial Court Case No. 08-CR-2913  
:  
: (Criminal Appeal from  
: Common Pleas Court)  
:  
:

.....  
**DECISION AND ENTRY**

Rendered on the 3rd day of February, 2012  
.....

PER CURIAM:

This matter comes before the court upon a pro se App.R. 26(A) application for reconsideration filed by appellant James Simpson.

Simpson seeks reconsideration of our December 2, 2011 opinion affirming his conviction and sentence on charges of murder, felonious assault, domestic violence, evidence tampering, and grand theft. In our ruling, we overruled two assignments of error, both of which challenged the trial court's refusal to allow Simpson to withdraw guilty pleas to the foregoing charges. Simpson had sought to withdraw the pleas for several reasons, including his trial counsel's alleged conflict of interest and his belief that he should have been charged with

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voluntary manslaughter rather than murder.

Simpson filed his application for reconsideration on December 14, 2011. Although this was two days beyond the ten-day period for seeking reconsideration under App.R. 26(A)(1), Simpson has requested an enlargement of time, pursuant to App.R. 14(B), asserting that he did not receive our opinion through the prison mail system until December 8, 2011. Based on that representation, and the brief delay at issue, we will grant an enlargement of time and proceed to the merits of the application.

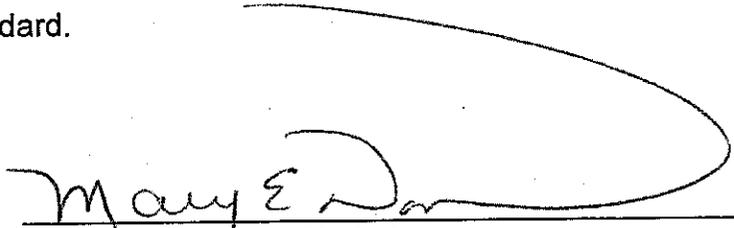
Upon review, we note that Simpson's application for reconsideration raises four assignments of error that were not presented previously. First, he contends the evidence was insufficient to support his murder conviction. Second, he raises a claim of ineffective assistance of counsel based on his attorney's friendship with the victim's brother. Third, he asserts ineffective assistance of counsel based on counsel's failure to raise certain arguments contained in a letter to the judge. Fourth, he argues that the trial court erred in assessing costs and fees against him and failing to classify him as indigent.

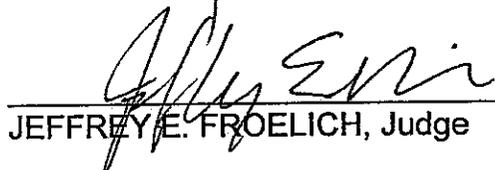
As set forth above, Simpson's direct appeal raised only two assignments of error challenging the trial court's refusal to allow him to withdraw his guilty pleas. An App.R. 26(A) application cannot be used to raise new assignments of error not presented earlier. To the extent that Simpson's application contains new assignments of error, we have nothing to "reconsider."

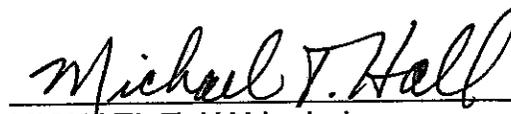
Finally, we note that two of Simpson's new assignments of error involve issues that we fully addressed in our December 2, 2011, opinion. Therein, we found that he properly was charged with murder rather than voluntarily manslaughter. We also found that Simpson knew about the friendship between his attorney and the victim's brother, and waived any objection,

before entering his guilty pleas. In his App.R. 26(A) application, Simpson re-argues these issues, albeit as different assignments of error. The purpose of an application for reconsideration, however, is not to repeat arguments that already have been rejected. An application for reconsideration should be granted only if it "calls to the attention of the court an obvious error in its decision or raises an issue for the court's consideration that was either not considered at all or was not fully considered by the court when it should have been." *State v. Wong*, 97 Ohio App.3d 244, 246, 646 N.E.2d 538 (1994). Simpson's application is denied because it fails to meet this standard.

IT IS SO ORDERED.

  
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MARY E. DONOVAN, Judge

  
\_\_\_\_\_  
JEFFREY E. FROELICH, Judge

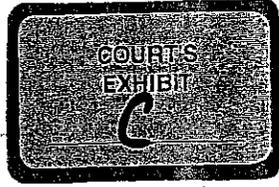
  
\_\_\_\_\_  
MICHAEL T. HALL, Judge

Copies mailed to:

Mathias H. Heck, Jr.  
Carley J. Ingram  
Montgomery County Prosecutor's Office  
P.O. Box 972  
Dayton, OH 45422

Kent J. DePorter  
7501 Paragon Road  
LL Level  
Dayton, OH 45459

Hon. Steven K. Dankof  
Montgomery County Common Pleas Court  
41 N. Perry Street  
Dayton, OH 45422



8-7-10

YOUR HONOR

I AM ASKING THAT YOU RECONSIDER ALLOWING ME TO WITHDRAW MY PLEA, AND GRANT ME ANOTHER EVALUATION. FOR ① YOUR HONOR I'VE BEEN TRYING TO EXPLAIN MY LOVE FOR MY WOMAN AND FAMILY, AND WHAT HAPPEND THAT DAY, AND THE EFFECT OF THE BREAK DOWN IN MY RELATIONSHIP, WAS HAVING ON ME. ② I UNDERSTAND THAT I AM COMPETENT TO STAND TRIAL, AND THAT RIGHT NOW I AM IN OF SOUND MIND. "BUT AT THE TIME OF MY OFFENSE I WAS BOTH SEVERELY DEPRESS'D AND STRESS'D OUT, NOT KNOWING WHAT WAS GOING ON WITH MY WOMAN OR HOW TO SAVE MY FAMILY." ③ YOUR HONOR, I DON'T FEEL AS IF I HAD A COMPLETE EVALUATION, CLEARLY THE FIRST DOCTOR DID NOT DO A THOROUGH JOB ONE TEST WAS NOT AVAILBLE, ANOTHER WAS DISREGUARDED, AND HE ONLY WENT OFF OF A VERBAL TEST HE GAVE ME. ④ SO OK I WAS GRANTED ANOTHER EVALUATION, LETS TALK ABOUT THAT, I SAW THE SECOND DOCTOR ONE TIME FOR ABOUT 45 MINUTES AND DID NOT SEE HER AGAIN. SO THEN YOU YOUR HONOR TELLS ME, THAT "SHE WENT OVER THE FIRST DOCTOR'S PAPER WORK AND PEREED ON IT," INSTEAD OF DOING A THOROUGH EVALUATION OF HER OWN? HOW COULD ANYONE THINK THAT IS FAIR? ⑤ YOUR HONOR I DID NOT WANT TO ACCEPT THAT PLEA, BUT MR. LIEBERMAN LEAD ME TO BELIEVE THAT EVEN A JURY HEARING MY SIDE OF EVENTS I STILL WOULD BE FOUND GUILTY, GIVEN

THAT WAS MAINLY MY REASON FOR ACCEPTING THE PLEA.  
 YOUR HONOR I WAS LEAD TO BELIEVE NO MATTER WHAT I  
 WOULD LOSE AT TRIAL, IF IT WASN'T FOR WHAT MR. LIEBERMAN  
 TOLD ME, I HAD MY MIND SET ON GOING TO TRIAL. ⑦ I  
 WANT TO BE ABLE TO TELL WHAT WAS GOING ON  
 BETWEEN ME AND ALCISON BEFORE AND ON THAT DAY,  
 TO SHOW WHAT STATE OF MIND I WAS IN AT THE  
~~ALLEGED TIME~~ OF MY OFFENSE, "THAT IS WHAT THE LAW  
 SAYS IT SHOULD BE BASED ON," NOT THAT AS OF NOW  
 I'M IN OF SOUND MIND. YOUR HONOR IT IS CALL'D  
 TEMPORARILY, LOST OF SANITY. ⑧ I BELIEVE THE  
 COURTS IS BEING UNJUST, BECAUSE THERE WAS AN  
 ARGUMENT BETWEEN ME, AND YOU YOUR HONOR, AND  
 BECAUSE I FILED AN APPEAL WITH THE DISCIPLINARY COUNSEL  
 OF THE OHIO SUPREM COURTS. IT CLEARLY SHOWS THAT THE COURTS  
 AND THE D.A'S OFFICE, IS NOT BEING FAIR IN MY CASE  
 AND THAT MY CONSTITUTIONAL RIGHTS HAVE BEEN  
 VIOLATED, SO YOUR HONOR I ASK THAT ALL PERSONAL  
 FEELINGS BE PUT ASIDE, AND THAT YOU ALLOW ME  
 TO HAVE A FAIR TRIAL, AND GRANT THE RIGHTS TO  
 A FAIR EVALUATION. ⑨ YOUR HONOR WHEN I HAD A HEARING  
 ON JULY, 31<sup>ST</sup>, 2010, I WAS UNDER THE IMPRESSION IT WAS TO  
 OFFICIALLY WITHDRAW MY PLEA ON RECORD THEN? AND THAT  
 THE COURT DATE ON AUGUST 5<sup>TH</sup> WAS TO ENTER MY MOTIONS.  
 SO HOW THEN WAS MY WITHDRAWAL PLEA DENIED? WHEN I  
 THOUGHT IT WAS ALREADY GRANTED.

The judgment of the Montgomery County Common Pleas Court is affirmed.

.....

DONOVAN and FROELICH, JJ., concur.

Copies mailed to:

Mathias H. Heck, Jr.  
Carley J. Ingram  
Kent J. DePoorter  
Hon. Steven K. Dankof