

IN THE SUPREME COURT OF OHIO

ORIGINAL

GEORGE L. DINGESS,

CASE NO. 07CR-08-6217

PETITIONER

HABEAS CORPUS

V

ORIGINAL ACTION

TIMOTHY BUCHANNON,

13-1332

(WARDEN) RESPONDENT

PETITIONER SUBMITS HIS FOR WRIT OF HABEAS CORPUS

George L. Dingess
GEORGE L. DINGESS, PRO SE:

no# 677-810

15708 State Route 78 West

Caldwell, Ohio 43724

COUNSEL FOR RESPONDENT,

Ohio Attorney General

150 East Gay Street 16th floor

Columbus, Ohio 43215-6001

COUNSEL FOR RESPONDENT,

RECEIVED
AUG 19 2013
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
AUG 19 2013
CLERK OF COURT
SUPREME COURT OF OHIO

STATEMENT OF FACTS:

On August 27, 2007, appellant was indicted for three drug offenses: possession of crack cocaine as a felony of the first degree, possession of powder cocaine as a felony of the fourth degree, and possession of marijuana as a felony of the third degree subsequently, appellant filed a motion to suppress evidence obtained from the issuance of search warrant. Following a hearing on the motion, the trial court denied the motion suppress. The case proceeded to jury trial on or about August 2, 2010. On August 5, 2010 the jury returned verdicts finding appellant guilty of all three drug offenses. A sentencing hearing was held that same day. The trial court imposed a total prison term of six years, which was ordered to run consecutively to separate, unrelated federal prison term.

Appellant, through counsel, filed timely direct appeal in which she asserted five assignments of error, claiming:

- 1) the trial court erred in denying his motion to suppress because the supporting affidavit attached to the search warrant was insufficient to establish probable cause;
- 2) he was denied a fair trial because the government stacked evidence on a table for the jury to see prior to opening statement.
- 3) His conviction was against the manifest weight of the evidence;
- 4) he was denied a fair trail because a forensic expert analyzed the evidence in a manner focused exclusively upon him as the accused; and
- 5) the trail court erred in denying his motion for acquittal. The appellate court rejected appellant's claims on direct appeal and affirmed his conviction. See Dingess. An entry journalizing the appellate judgment was filed on November 3, 2011.

On 4/17/13 the appellant perfected a application for reconsideration pursuant to App. R. 26 (B), and turned it over to prison officials whom delayed it's filing, and on. 4/24/13, the appellant's 26(B) application was denied as untimely by 2 days.

On 12/9/09, appellant [hereinafter Petitioner]: discovered grounds that invalidated his conviction more fully illustrated on the accompanying declaration and memorandum in support of application for a writ of habeas corpus and submitted his petition to this court.¹

¹ The 26(B) contained his (correct) argument regarding Crawford V. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 Led. 2D 177 (2004). violation, subjudice

IN THE SUPREME COURT OF OHIO

GEORGE L. DINGESS, : CASE NO.
PETITIONER : TRIAL COURT NO. 07CR-08-6217
 : APP. COURT NO. 10-AP-848
V :
 : PETITION FOR WRIT OF HABEAS CORPUS
TIMOTHY BUCHANNON, : PURSUANT TO O.R.C. § 2725
 : ARTICLE IV § 2 OHIO CONSTITUTION
(WARDEN) RESPONDENT :
 :

STATE OF OHIO

COUNTY OF NOBLE SS.. GEORGE L. DINGESS

Now comes the petitioner, George L. Dingess, in pro se; [hereinafter petitioner]: after being duly cautioned under law deposes and goes on to state...

1. Jurisdiction, is confused on this court pursuant to Ohio Revised Code Chapter 2725, et seq.
Also. ARTICLE IV § 2 OHIO CONSTITUTION
2. Venue, is conferred on this court as prescribed by law also the acts alleged to occur are occurring in Ohio State.
3. Petitioner is imprisoned and unlawfully restrained of his liberties pursuant to judgment entries of conviction and sentence entered in Franklin county, Ohio Common Pleas court on Case no. 07CR-08-6217. Certified copies of those entries constitute the "commitment or cause or detention of petitioner pursuant to O.R.C. 2725.04(D).
4. Timothy Buchannon (warden), of the Noble Correctional Institution, is the officer by whom the petitioner is so confined and restrained under color of his office and state law. [hereinafter respondent].
5. Respondent is interfering with petitioner's civil and statutory rights, also his liberty protected interest without justification or legal authority to do so, violative of O.R.C. 2921.45 et seq. and

U.S. Law.

6. Petitioner's imprisonment and detainment is without legal authority since it derives from state actions contrary to clearly established law(s) as handed down by the United States Supreme Court (see declaration in support): and binding on the state of Ohio under governing authority, also article VI cl 2 of the U.S. Constitution. Petitioner claims actual innocence.
7. Respondent cannot in "Good Faith" verify petitioner's current imprisonment is not contrary to governing law without then acting in Bad Faith.
8. Petitioner's right to the unfettered ability to petition a court for grievance or state corrective process has been directly interfered, with respondent's policies and directives and access to Ohio courts as "guaranteed" him pursuant to Article I §16 of the Ohio Constitution (Ohio's open court right to remedy provision) see (Declaration in support):
9. Petitioner claims that during the periods of 200 through 2005, five United States Supreme court decisions came out that rendered the trial court's and the jury verdict in his criminal trial *altra vir*, rendering the judgment entry/order of his sentence null and void having no legal force or effect, since it was squarely contradictory to the United States Supreme Court's decision.
10. It is of the historical essence of habeas corpus that it lies to test proceedings so fundamentally lawless that imprisonment pursuant to them is not merely erroneous but void. Article I §16 of the Ohio Constitution right to remedy precludes the general assembly from depriving petitioner to a remedy before he knew or should have known of his injury.
11. Petitioner asserts this court rejects any notion that purports to give any inferior tribunal the power to reject the mandates of the court on constitutional questions or rules of court in favor of conflicting judicial mandates, in addition.

The [Judiciary Act of March 3, 1875, 18 stat 470] does not confer upon a common pleas court the jurisdiction over causes in which the jurisdiction of the Supreme Court of the United States is made exclusive by section 687 et seq. rev. stat.

12. Petitioner claims his conviction and sentence was not within the subject matter jurisdiction of the Franklin County Court of Common Pleas and Judgment is made a ultra vires and his imprisonment is in violation of the constitution of the United States, due to illegal arrest.

13. As a result petitioner is entitled to an immediate release

14. Petitioner has verified precedent authority from the United States Supreme Court, the veracity of which cannot be ignored in Ohio. The Petitioner has verified these allegations and has attached his declaration in support of this petition.

Wherefore, petitioner request that this court issue a writ of habeas corpus ordering the petitioner's release

Respectfully Submitted,

George L. Dingess

GEORGE L. DINGESS, PRO SE:

no# 677-810

15708 State Route 78 West

Caldwell, Ohio 43724



sworn and subscribed before me this 14 day of Aug, 2013

Deborah L. King

Notary Public

My Commission expires 2-12, 2014

/ Noble County / State of Ohio /

CERTIFICATE OF SERVICE

I certify that one true copy of the original foregoing petition has been forwarded to the
respondent at ... Department of Corrections Litigation Div. by regular U.S. Mail on this 14th
day of Aug 2013.

George L. Dingess
GEORGE L. DINGESS, PRO SE:

no# 677-810

15708 State Route 78 West

Caldwell, Ohio 43724

Respondent
Prisoner Litigation Division
770 West Broad St.
Columbus, Ohio 43215

sworn and subscribed before me this 14 day of Aug, 2013

Deborah L. King

Notary Public

DEBORAH L. KING
NOTARY PUBLIC, STATE OF OHIO
My Comm. Expires
2-12-14

My Commission expires 2-12, 20 14

/ Noble County / State of Ohio /

Case No

55768J18 07CR 08-6217

State of Ohio,
Franklin County, ss

FILED
COMMON PLEAS COURT
FRANKLIN CO OHIO
2007 AUG 27 AM 7:33
CLERK OF COURTS

INDICTMENT FOR: Possession Of Cocaine (2925.11 R.C.) (F-1) (1 Count); Possession Of Cocaine (2925.11 R.C.) (F-4) (1 Count) and Possession Of Marijuana (2925.11 R.C.) (F-3) (1 Count); (Total: 3 Counts)

In the Court of Common Pleas, Franklin County, Ohio, of the Grand Jury term beginning May eleventh in the year of our Lord, Two Thousand Seven.

Count 1

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that George L. Dingess Sr late of said County, on or about the 17th day of August in the year of our Lord, 2006, within the County of Franklin aforesaid, in violation of section 2925 11 of the Ohio Revised Code, did knowingly obtain, possess, or use a controlled substance included in Schedule II, to wit methylbenzoyllecgonine, commonly known as crack cocaine, in an amount equal to or exceeding twenty-five (25) grams but less than one hundred (100) grams of crack cocaine as defined in section 2925.01 of the Ohio Revised Code,

Count 2

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that George L. Dingess Sr late of said County, on or about the

ON COMPUTER

55768J19

17th day of August in the year of our Lord, 2006, within the County of Franklin^{55768J19} aforesaid, in violation of section 2925 11 of the Ohio Revised Code, did knowingly obtain, possess, or use a controlled substance included in Schedule II, to wit methylbenzoylecgonine, commonly known as cocaine, in an amount equal to or exceeding five (5) grams but less than twenty-five (25) grams of cocaine as defined in section 2925 01 of the Ohio Revised Code,

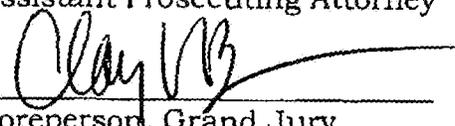
Count 3

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that George L. Dingess Sr late of said County, on or about the 17th day of August in the year of our Lord, 2006, within the County of Franklin aforesaid, in violation of section 2925 11 of the Ohio Revised Code, did knowingly obtain, possess, or use a controlled substance included in Schedule I, to wit. marijuana, in an amount equal to or exceeding one thousand (1,000) grams but less than five thousand (5,000) grams, contrary to the statute in such cases made and provided and against the peace and dignity of the State of Ohio.

RON O'BRIEN
Prosecuting Attorney
Franklin County, Ohio

A TRUE BILL


Assistant Prosecuting Attorney


Foreperson, Grand Jury

State of Ohio v George L. Dingess Sr.
Address. 1946-C Fountain View Court, Columbus, Ohio 43232
DOB 06-25-1973
Sex/Race M/B
Date of Arrest: 08-17-2006
SSN: 292-76-3003
Police Agency: Whitehall
Municipal Reference: 21014/06
ITN #

55768J20

Count 1 Possession Of Cocaine
2925.11 F-1
Count 2 Possession Of Cocaine
2925 11 F-4
Count 3 Possession Of Marijuana
2925 11 F-3

Case No

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,	:	Termination No. 5 by KT
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 07CR-08-6217
	:	
GEORGE DINGESS,	:	Judge SCHNEIDER
	:	
Defendant.	:	

COMMON PLEAS
FRANKLIN COUNTY
ALC-9 A11 9
CLERK OF COURTS

JUDGMENT ENTRY
(Prison Imposed)

On August 2, 2010, the State of Ohio was represented by Assistant Prosecuting Attorney David Insley and the Defendant was represented by attorney Frederick Benton. The case was tried by a jury which returned a verdict August 5, 2010, finding the Defendant guilty of **Count One** of the Indictment, to wit: **POSSESSION OF CRACK COCAINE**, in violation Section 2925.11 of the Ohio Revised Code, being a Felony of the First Degree; guilty of **Count Two** of the Indictment, to wit: **POSSESSION OF COCAINE**, in violation Section 2925.11 of the Ohio Revised Code, being a Felony of the Fourth Degree; and guilty of **Count Three** of the Indictment, to wit: **POSSESSION OF MARIJUANA**, in violation Section 2925.11 of the Ohio Revised Code, being a Felony of the Third Degree.

The Defendant on August 5, 2010, was informed of the aforesaid verdict and his appellate review rights pursuant to Crim. R. 32. The Court proceeded to sentencing.

On August 5, 2010, a sentencing hearing was held pursuant to R.C. 2929.19. The State of Ohio was represented by Assistant Prosecuting Attorney David Insley and the Defendant was represented by attorney Frederick Benton.

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording him an opportunity to make a statement on his own behalf in the form of mitigation and to present information regarding the existence or non-existence of the factors the Court has considered and weighed.

The Court has considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors set forth in R.C. 2929.12. In addition, the Court has weighed the factors as set forth in the applicable provisions of R.C. 2929.13 and R.C. 2929.14. The Court further finds that a prison term is mandatory as to counts one and two, pursuant to R.C. 2929.13(F).

The Court hereby imposes the following sentence: **SIX (6) YEARS** as to count one; **THREE (3) YEARS** as to count two; **TWELVE (12) MONTHS** as to count three to be served concurrently with each other but consecutive to Federal Case No. 2:07-CR100

at the OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS. It is further ORDERED that the defendant's driver's license is suspended for a period of two (2) years, without work driving privileges effective August 5, 2010.

After imposing sentence, the Court stated its reasons as required by R.C. 2929.19 and consistent with *State v. Foster*, 2006-Ohio-856.

The Defendant was notified of the Ohio Department of Rehabilitation and Correction's Shock Incarceration Programs and Post Release Control in writing and orally.

The Court has considered the Defendant's present and future ability to pay a fine and financial sanction and does, pursuant to R.C. 2929.18, hereby render judgment for the following fine and/or financial sanctions: No fine imposed. Defendant shall pay court costs in an amount to be determined. The Court finds the defendant to be indigent.

The total fine and financial sanction judgment is **\$0 plus costs.**

After the imposition of sentence, the Court notified the Defendant, orally and in writing, of the applicable period of **five (5) years mandatory** post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e).

The Court finds that the Defendant has **ten (10) days** of jail credit and hereby certifies the time to the Ohio Department of Corrections. The Defendant is to receive jail time credit for all additional jail time served while awaiting transportation to the institution from the date of the imposition of this sentence.



CHARLES A. SCHNEIDER, JUDGE

cc: Prosecuting Attorney
Defendant's Attorney

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 10AP-848
	:	(C.P.C. No. 07CR-08-6217)
George Dingess,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 7, 2013

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

George Dingess, pro se.

ON APPLICATION FOR REOPENING

CONNOR, J.

{¶ 1} Defendant-appellant, George Dingess ("appellant"), filed an application, pursuant to App.R. 26(B), seeking to reopen his appeal resolved in this court's decision in *State v. Dingess*, 10th Dist. No. 10AP-848, 2011-Ohio-5659, claiming ineffective assistance of appellate counsel. The State of Ohio filed a memorandum in opposition to appellant's application. Because appellant's application was filed untimely without good cause, and because he failed to comply with App.R. 26(B)(2)(d) by attaching a sworn statement explaining the basis for the deficiency with his appellate counsel and the manner in which it prejudiced him, we deny his application to reopen.

{¶ 2} On August 27, 2007, appellant was indicted for three drug offenses: possession of crack cocaine as a felony of the first degree, possession of powder cocaine as

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a felony of the fourth degree, and possession of marijuana as a felony of the third degree. Subsequently, appellant filed a motion to suppress evidence obtained from the issuance of a search warrant. Following a hearing on the motion, the trial court denied the motion to suppress. The case proceeded to jury trial on or about August 2, 2010. On August 5, 2010, the jury returned verdicts finding appellant guilty of all three drug offenses. A sentencing hearing was held that same day. The trial court imposed a total prison sentence of six years, which was ordered to run consecutively to a separate, unrelated federal prison term. A judgment entry journalizing appellant's convictions and sentence was filed on August 9, 2010.

{¶ 3} Appellant, through counsel, filed a timely direct appeal in which he asserted five assignments of error, claiming: (1) the trial court erred in denying his motion to suppress because the supporting affidavit attached to the search warrant was insufficient to establish probable cause; (2) he was denied a fair trial because the government stacked evidence on a table for the jury to see prior to opening statements; (3) his conviction was against the manifest weight of the evidence; (4) he was denied a fair trial because a forensic expert analyzed the evidence in a manner focused exclusively upon him as the accused; and (5) the trial court erred in denying his motion for acquittal. We rejected appellant's claims on direct appeal and affirmed his convictions. *See Dingess*. An entry journalizing the appellate judgment was filed on November 3, 2011.

{¶ 4} App.R. 26(B) allows applications to reopen an appeal from a judgment of conviction and sentence based upon a claim of ineffective assistance of appellate counsel. App.R. 26(B)(1) provides that an application for reopening shall be filed within 90 days from the journalization of the appellate judgment. Additionally, App.R. 26(B)(2)(b) requires a showing of good cause for an untimely filing where the application is filed more than 90 days after the journalization of the appellate judgment.

{¶ 5} Appellant's application to reopen was filed on November 14, 2012. However, the 90-day deadline, established under App.R. 26(B)(1), expired on or about February 1, 2012. Thus, appellant's application is untimely, in that the instant application was filed more than one year after the journalization of the appellate judgment in this action. In order to pursue his application, appellant must demonstrate good cause as to

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why he was unable to make a timely filing. For the reasons that follow, we find appellant has failed to demonstrate good cause.

{¶ 6} In an effort to demonstrate good cause, appellant claims to assert good cause by arguing that his appellate counsel failed to comply with his request to keep him abreast of the status of his case and of any new developments and failed to provide information which would allow him to pursue proper avenues of appeal. Appellant submits that he diligently searched to learn the status of his case pending before the Supreme Court of Ohio and discovered that his appeal had been denied, and that he was limited to pursuing this matter under the 90-day timeframe set forth in App.R. 26. Appellant argues his appellate counsel's failure to monitor the appeal process in the Supreme Court and to advise him of the denial of his appeal prevented him from filing a timely application for reopening.

{¶ 7} Notably, however, the 90-day timeframe for filing an application for reopening begins to run from the date our appellate judgment is filed. In this case, that date was November 3, 2011. And, as noted above, this deadline expired on February 1, 2012. In other words, whether or not the Supreme Court declined to accept his appeal for review did not affect the calculation of the 90-day deadline for filing an application for reopening. Additionally, the fact that appellant was aware an appeal had been filed in the Supreme Court is evidence that he knew he had lost his appeal in this case, and therefore he cannot demonstrate good cause for failing to comply with the 90-day deadline.

{¶ 8} Furthermore, even if appellant were to claim purported ignorance of the 90-day deadline, such a claim does not prove good cause. "Lack of effort or imagination, and ignorance of the law * * * do not automatically establish good cause for failure to seek timely relief." *State v. Reddick*, 72 Ohio St.3d 88, 91 (1995) (affirming denial of application to reopen appeal). Appellant cannot rely upon his alleged lack of legal training to excuse his failure to comply with the 90-day deadline. *State v. Farrow*, 115 Ohio St.3d 205, 206, 2007-Ohio-4792, ¶ 6. The 90-day requirement is "applicable to all appellants." *Id.* at 6, quoting *State v. Winstead*, 74 Ohio St.3d 277, 278 (1996). "Consistent enforcement of the rule's deadline by the appellate courts in Ohio protects on the one hand the state's legitimate interest in the finality of its judgments and ensures on

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the other hand that any claims of ineffective assistance of appellate counsel are promptly examined and resolved." *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, ¶ 7.

{¶ 9} Appellant has failed to offer a sound reason as to why he (unlike other criminal defendants) could not comply with this fundamental element of the rule. Thus, denial of appellant's application to reopen is proper.

{¶ 10} In addition, an application for reopening must set forth "[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). The application must also contain a sworn statement setting forth the basis of the claim alleging that appellate counsel's representation was deficient and the manner in which the deficiency prejudiced the outcome of the appeal. App.R. 26(B)(2)(d). The application "shall be granted if there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal." App.R. 26(B)(5).

{¶ 11} Here, appellant's application fails to comply with App.R. 26(B)(2)(d). Pursuant to this provision, an application for reopening must contain "[a] sworn statement of the basis for the claim that appellate counsel's representation was deficient with respect to the assignments of error or arguments raised * * * and the manner in which the deficiency prejudicially affected the outcome of the appeal."

{¶ 12} In this case, appellant's application does not contain a sworn statement. Such a statement is mandatory, and the failure to comply with this requirement warrants denial of an application to reopen. *State v. Lechner*, 72 Ohio St.3d 374 (1995). *See also State v. Franklin*, 72 Ohio St.3d 372 (1995) (an affidavit swearing to the truth of the allegations in the application falls short of the requirements set forth in App.R. 26(B)(2)(d); application denied); *State v. Thompson*, 10th Dist. No. 97APA04-489 (Mar. 24, 1998) (appellant failed to include a sworn statement with his application; the sworn statement is mandatory, and therefore the application is without merit); *State v. Brown*, 8th Dist. No. 77572, 2012-Ohio-5703 (where no sworn statement was submitted, denial of the application for reopening solely on the basis of failing to comply with App.R. 26(B)(2)(d) was affirmed because inclusion of the statement was mandatory); and *State v.*

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No. 10AP-848

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Davis, 7th Dist. No. 05 MA 3, 2007-Ohio-7213, ¶ 9 (failure to submit a sworn statement pursuant to App.R. 26(B)(2)(d) is sufficient to deny an application to reopen).

{¶ 13} In conclusion, because appellant's application was filed untimely without good cause, and because he failed to comply with the mandatory requirement set forth in App.R. 26(B)(2)(d), we find it is proper to deny appellant's application for reopening. Consequently, it is unnecessary for us to address the merits of appellant's application and we deny appellant's application for reopening.

Application for reopening denied.

TYACK and BROWN, JJ., concur.
