

IN THE SUPREME COURT OF OHIO

STATE OF OHIO)	CASE NO. 14-1884
)	
Appellee)	ON APPEAL FROM THE EIGHTH
)	APPELLATE DISTRICT OF OHIO
)	
-vs-)	COURT OF APPEALS CASE NO.
)	90845, MOTION NO. 475308
)	
PATRICK WILLIAMS,)	
)	
APPELLANT)	

MERIT BRIEF OF APPELLANT PATRICK WILLIAMS

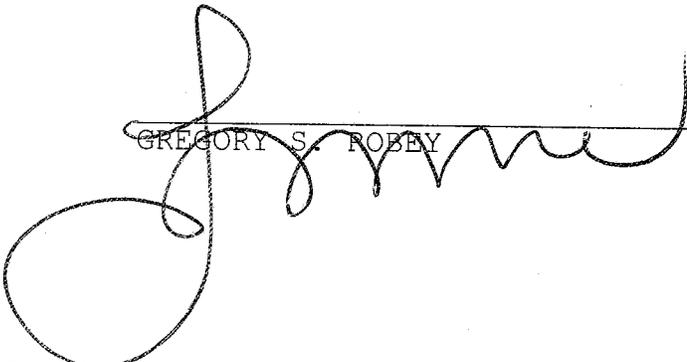
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CERTIFICATE OF SERVICE

A copy of this motion was SENT by U.S. Mail to Timothy McGinty, Cuyahoga County Prosecutor, 1200 Ontario St., Cleveland, OH 44113 on this 3/12/ 2015.

GREGORY S. ROBEY



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STATEMENT OF FACTS

On March 30, 2007, the Cuyahoga County grand jury indicted Appellant in case number CR 494311, on five counts charging: aggravated murder, murder, and three counts of felonious assault. All counts contained one and three year firearm specifications.

The indictment was based upon events occurring on the evening of December 30, 2006. On this evening, the victim, Tynell Anderson, and his girlfriend, Erika Wright, walked to Dave's Supermarket at East 40th Street and Quincy Ave, Cleveland, Ohio. At the supermarket, Erika Wright and Martese Williams, Appellant's sister, got in to a fight (T.207). The fight was broken up by the victim, Tynell Anderson. Subsequently, Wright and Anderson, returned back to Wright's mother's home at Arbor Park Village, Cleveland, Ohio.

A short time later, Appellant's mother came to the entranceway to the Wright's home demanding to see Erika Wright and Anderson. An argument ensued when Erika Wright came to the entranceway (T.214). At this point, Appellant allegedly exited a car and walked past Erika Wright and asked where the victim was at (T.223). Appellant allegedly fired several shots as the victim attempted to flee back in to the house. Appellant then allegedly returned to the car which drove off. The victim was later pronounced dead from multiple gun shot wounds.

Subsequently, a photo array¹ was shown to Erika Wright, who then selected Appellant's photo as the shooter (T.237). Despite questions as to the lighting conditions (T.267), her ability to actually see the shooter's face - who was wearing a hooded sweatshirt which covered his face (T.219), the shocking nature of the incident, the lapse of several days before viewing the photo array (T.236) and the potential suggestive contamination by police of showing her a single picture of Appellant prior to any photo array (T.386); no motion to suppress pre-trial identification evidence was ever filed or litigated by defense counsel².

At trial, genuine issues were raised as to the identification of Appellant and alibi. After affirmatively waiving any defects to the form/manner of the defense notice of alibi (T.16, 404), the prosecutor underhandedly and unfairly attacked the defense alibi (T.402), thereby creating a misleading mis-impression to the jury that no notice of alibi had been provided and that the alibi was a sham. For reasons still unknown today, the defense did not move for a mistrial

¹ This photo array was administered without a "blind administrator", nor in compliance with the mandates set forth in later adopted R.C. 2933.83, which went in to effect July 6, 2010.

² Both Erika Wright and Karen Wright were shown photo arrays. Karen Wright was unable to make a photo array identification (T.396), but Erika Wright was able to make an identification.

(T.404).

At the close of the State's case, a Crim. R. 29 acquittal was granted on one of the felonious assault counts. The defense did not present a case, nor even attempt to assert an alibi defense. A jury found Appellant guilty of aggravated murder, murder, two counts of felonious assault and all firearm specifications. Appellant was sentenced to an indefinite prison term of 23 years - life in prison.

Appellant timely appealed and his appointed counsel raised only four assignments of error: sufficiency of the evidence; manifest weight of the evidence; flight instruction to the jury; and ineffective assistance of trial counsel for failing to subpoena an alibi witness and for failure to question/challenge a prospective juror during voir dire. No assignments of error were raised as to: 1) ineffective assistance of trial counsel in failing to move for a mistrial after the unfair attack upon the defense alibi; 2) the failure to file and litigate a pre-trial motion to suppress pre-trial identification by Erika Wright and the failure to challenge the in-court identification of Appellant by Karen Wright, despite her inability to identify him in a pre-trial photo array (T.396); 3) prosecutorial misconduct. Appellant's convictions were affirmed on appeal in case number CA-90845.

Appellant has been imprisoned continuously since February

22, 2007. Since that time he has had no personal contact with his appointed appellate lawyer. Although a notice of appeal and merit brief were filed on his behalf, he was not given copies of same, nor was he ever given copies of the State's reply brief.

Appellant's appeal was denied on April 30, 2009. However, he was never notified by his appellate lawyer that the appeal had been denied, and was not given a copy of the decision. Appellant did not know the basis for the denial, nor was he aware of what assignment of errors that were raised. Further, his appellate lawyer never advised him of the option of appealing to the Ohio Supreme Court or moving to re-open the appeal pursuant to Rule 26(B) (Supplement to Motion to Reopen - Sworn Statement filed 7/24/14). In short, not being a lawyer himself, *being only 17 years old* at the time of the trial, Appellant detrimentally relied upon his appellate lawyer to raise all issues - yet this did not occur. Appellant then remained unrepresented until new counsel was hired in May, 2014.

On May 29, 2014, Appellant, through newly hired counsel, filed his motion to reopen the appeal. Subsequently, this motion was denied. Appellant now timely appeals that decision.

III. ARGUMENT

Proposition of Law No. I:

In a motion to re-open appeal, where the applicant demonstrates good cause for late filing, due to tender age, no legal training, no contact with appellate counsel; detrimental reliance upon appellate counsel; and the recent hiring of new counsel, re-opening should be granted by the lower court.

App.R. 26(B)(2)(b) mandates that an application for reopening requires "a showing of good cause for untimely filing if the application is filed more than ninety days after journalization of the appellate judgement". *State v. Wickline* (1996), 74 Ohio St.3d 369, 371; 658 N.E.2d 1052, 1053.

Appellant concedes that he filed his petition for reopening well past the 90 period. However, Appellant respectfully contends that he has demonstrated good cause for the untimely filing.

The circumstances surrounding the trial and appellate stages show that Appellant was just 17 years old when he was arrested by Cleveland Police on February 22, 2007. He had no experience with the criminal justice system (Supplement to Motion to Reopen - Sworn Statement filed 7/24/14). He has been in custody ever since his arrest. Following his conviction and sentencing, Appellant had no personal contact with his court appointed appellate lawyer. He never even met her. He was not consulted by her about the potential assignments of error for his appeal. He was never given a copy of the merit brief filed on his behalf, nor a copy

of the State's brief. When his appeal was denied on April 30, 2009, he was never notified by his appellate lawyer, nor was he given a copy of the written decision. Appellant did not know the basis for the denial, nor was he aware of what assignments of error were actually raised on his behalf. Lastly, his appellate lawyer never advised him of the option of appealing to the Ohio Supreme Court, or moving to re-open his direct appeal (Supplement to Motion to Reopen - Sworn Statement filed 7/24/14). In short, he was left out in the cold and unrepresented for several years.

Not being a lawyer himself, being only 17 years old at the time of trial, not having any experience with the criminal justice system; Appellant detrimentally relied upon his appellate lawyer to properly raise all the issues. This did not occur - as set forth more fully below in Propositions of Law Nos. II-IV. It is well established that a criminal defendant is entitled effective assistance of appellate counsel on a first appeal as of right. *Evitts v. Lucey* (1985), 469 U.S. 387, 105 S.Ct. 830; *State v. Rojas* (1992), 64 Ohio St.3d 131, 592 N.E.2d 1376.

While it is undisputed that he filed his motion well past the 90 day time limit, Appellant urges this court to adopt the more flexible position set forth by Justice Pfeifer in his concurring opinion in *State v. Gumm* (2004), 103 Ohio St.3d 162, 2004-Ohio-4755, which would suspend the 90-day time limit until a defendant has released his allegedly deficient appellate counsel

or until the defendant has hired additional counsel.

In this case, Appellant hired new counsel (the undersigned) in May, 2014. His motion to reopen was promptly filed May 29, 2014. Using the Justice Pfeifer rationale, this motion would indeed be filed *within* the 90 day period. Irrespective of that, the circumstances of this case clearly demonstrate that the cumulative effect of all of the above-mentioned factors in this matter, when considered along with very viable substantive assignments of error that were never raised on direct appeal, along with the life imprisonment sentence imposed; good cause is indeed established here.

In accord, the right effective of assistance of appellate counsel has long been recognized as *vital* to the criminal justice system. ***Evitts v. Lucey* (1985), 469 U.S. 387, 105 S.Ct. 830** . In ***Penson v. Ohio* (1988), 488 U.S. 75**, when the actions of defense counsel amounted to a constructive denial of the right to counsel, the U.S. Supreme Court reinstated the defendant's appeal, finding that leaving defendant without counsel during the appellate court's actual decisional process was presumptively prejudicial to the accused. Like the factual scenario in ***Penson***, Appellant was left without counsel from April 30, 2009, the date of the appellate court decision, until May, 2014, when he hired new counsel and promptly filed his motion to reopen. It is simply unfairly prejudicial to impose a strict 90 day time limit for

reopening upon a young man serving a life sentence, under the factual circumstances in this particular case. **See generally** *Commonwealth v. Alvarez* (2007), 69 Mass. App. Ct. 438; *Commonwealth v. Kegler* (2006), 65 Mass. App. Ct. 907; *Commonwealth v. Trussell* (2007), 68 Mass. App. Ct. 452.

Proposition of Law No. II:

An accused is entitled to effective assistance of assistance of appellate counsel, in order to raise a specific assignment of error relating to ineffective assistance of trial counsel in failing to move for a mistrial.

Appellant is entitled to the effective assistance of appellate counsel. *State v. Reed* (1996), 74 Ohio St.3d 534, 1996-Ohio-21, 660 N.E.2d 456. Yet, in this case he did not receive same. In this case, Appellate counsel failed to raise the critical issue of ineffective assistance of trial counsel for failing to move for a mistrial based upon the State's improper attack on Appellant's alibi. *State v. Hill* (2001), 90 Ohio St.3d 571, 740 N.E.2d 282; *Strickland v. Washington* (1984), 466 U.S. 668, 104 S. Ct. 2052. This was a fatal error because a key issue in this case was whether the State had accused the right person. The defense theory of the case was that Appellant did not commit this crime because he was at a location some 5 ½ miles away at the time (T.188). The defense provided the prosecutor with an "informal" notice of alibi. The prosecutor waived any defects

relating to said notice (T.16, 404). Yet, after doing so, the prosecutor unfairly attacked the alibi, by asking the lead investigating detective if he had received notice of or investigated any alibi (T.402). This testimony created the misleading impression that Appellant provided the State no notice of an alibi, and essentially created a sham alibi at the very last minute. This misconduct was particularly devastating to the defense because it went to a main issue in the trial - did the State have the right person? Further, this point was unfairly emphasized to the jury when the prosecutor persisted in this improper line of questions attacking the alibi (T.402).

Despite the devastating effect upon the defense of:

1) destroying the alibi defense itself; and, 2) impugning the credibility of defense counsel and the defense; no motion for mistrial was made (T.404). Instead, defense counsel settled for a curative instruction³. However, a fair reading of the entire record, especially considering that alibi was the only real defense offered, no instruction could have effectively cured the prosecutor's egregious and affirmative misconduct. Considering that this was an aggravated murder case with the potential sentence of life imprisonment for a 17 year-old at stake, the failure to move for a mistrial clearly fell below the minimal

³ Amazingly, even defense counsel *himself* stated that some people could view their failure to move for a mistrial as ineffective assistance of counsel (T.404)

accepted standard for effective assistance of trial counsel.

***Strickland v. Washington* (1984), 466 U.S. 668, 104 S. Ct. 2052.**

Had a mistrial been requested and granted, the jury does not convict Appellant - the final outcome is different. From that point going forward, there is a high likelihood that the State would tender a plea offer of a lesser included offense of aggravated murder, such as murder or voluntary manslaughter. In short, the outcome for Appellant would have been different.

The failure to raise this issue on direct appeal is indefensible. Clearly, it involved the major issue in the case - did the State have the right person accused? Clearly, the attack destroyed any hope of an alibi defense. And clearly, the attack devastated any credibility that defense counsel had. In short, it was a mortal wound for Appellant. There simply is no good reason why this issue was not raised by appellate counsel. Had this issue been properly raised on direct appeal, the outcome would have been different. ***State v. Reed*, 74 Ohio St.3d 534, 1996-Ohio-21, 660 N.E.2d 456. See generally *State v. Chapman* (1996), 112 Ohio App.3d 607; *State v. Rowland* (2000), 138 Ohio App.3d 473; *State v. Rozanski*, 2003-Ohio-3454.**

Proposition of Law No. III:

An accused is entitled to effective assistance of appellate counsel, in order to raise a specific assignment of error relating to ineffective assistance of trial counsel in failing to litigate a motion to suppress identification evidence.

Appellant is entitled to the effective assistance of appellate counsel. *State v. Reed* (1996), 74 Ohio St.3d 534, 1996-Ohio-21, 660 N.E.2d 456. In the case at bar, Appellant did not receive same, as an ineffective assistance of trial counsel claim, specifically for failing to litigate a motion to suppress identification evidence, was never advanced in the direct appeal. *State v. Hill* (2001), 90 Ohio St.3d 571, 740 N.E.2d 282; *Strickland v. Washington* (1984), 466 U.S. 668, 104 S. Ct. 2052.

In this case, the main issue at trial was whether the State had accused the right person. In short, it was an identification case. A review of facts shows that there were serious questions surrounding the identification of Appellant as the shooter. First, the shooting happened on December 30, 2006, at approximately 6:30 PM, and it was dark outside (T.267). Second, the gunman was wearing a hooded sweatshirt that was covering his face (T.219). Third, it is undisputed that this was a shocking incident. Fourth, shortly following the incident and prior to administering a photo array⁴, police showed Erika Wright a single

⁴ The array in this case was administered under much more lax procedures than those currently set forth in R.C. 2933.83.

photo of appellant (T.386), which likely contaminated the later photo array by being unduly suggestive. **See generally Stovall v. Denno (1967), 388 U.S. 293, 87 S. Ct. 1967; Simmons v. U.S. (1968), 390 U.S. 377, 88 S. Ct. 967; Neil v. Biggers (1972), 409 U.S. 188, 93 S. Ct. 375.**

In the case at bar, despite the above-mentioned circumstances, the defense failed to file a motion to suppress the pre-trial identification of Appellant by Erika Wright. Further, the defense made no attempt to challenge the in-court identification of Appellant by Karen Wright, despite her inability to identify him in a pre-trial photo array (T.396). **See generally Neil v. Biggers (1972), 409 U.S. 188, 93 S. Ct. 375; State v. Moody (1978), 55 Ohio St.2d 64, 9 Ohio Op. 3d 71, 377 N.E.2d 1008.**

The failure of trial counsel to pursue a motion to suppress seeking to exclude an unreliable pre-trial identification, and the failure to contest the admissibility of a questionable in-court identification (T.283), amounts to clear ineffective assistance of counsel. This point becomes especially salient when one considers that mistaken witness identifications have resulted in more miscarriages of justice than any other type of evidence⁵.

⁵ Katz, L. *Ohio Arrest, Search and Seizure*. Cleveland: West, 2009; Sobel, N. *Eyewitness Identification: Legal and Practical Problems*. New York: Clark Boardman Co., 1972; Wall, P.M. *Eye Witness Identification in Criminal Cases*. Springfield, IL C.C.

It cannot be called "trial strategy", when the defense theory was that the State has accused the wrong person who was at another location 5 ½ miles away at the time of the shooting (T.188). Had a motion to suppress been properly filed and litigated, there was a strong likelihood that it would have been granted based upon the above-mentioned circumstances, which question the reliability of that identification. As a result, the entire outcome of the case would have been different, since it would have been extremely challenging for the State to convince a jury that they had the right person without this "identification" testimony. There is simply no good excuse as why appellate counsel did not raise this critical issue on direct appeal. In short, the failure to raise this important issue on direct appeal amounts to ineffective assistance of appellate counsel. **See generally State v. Chapman (1996), 112 Ohio App.3d 607; State v. Rowland (2000), 138 Ohio App.3d 473; State v. Rozanski, 2003-Ohio-3454.**

Proposition of Law No. IV:

An accused is entitled to effective assistance of appellate counsel in order to raise the issue of prosecutorial misconduct, that is supported by the record.

Appellant is entitled to effective assistance of appellate counsel. **State v. Reed (1996), 74 Ohio St.3d 534, 1996-Ohio-21, 660 N.E.2d 456.** However, Appellant did not receive same, as

Thomas, 1965.

appellate counsel failed to properly raise the issue of prosecutorial misconduct which is clearly supported by the record. *State v. Hill* (2001), 90 Ohio St.3d 571, 740 N.E.2d 282; *Strickland v. Washington* (1984), 466 U.S. 668, 104 S. Ct. 2052.

It is well established that a prosecutor must not engage in misconduct in a trial. *State v. Williams* (2003), 99 Ohio St.3d 493, 2003-Ohio-4396; *State v. Hicks* (2011), 194 Ohio App.3d 743, 2011-Ohio-3578; *State v. Daugherty* (1987), 41 Ohio App.3d 91. In the case at bar, the record clearly demonstrates prosecutorial misconduct. The prosecutor knew full well that the theory of the defense case was that Appellant was not the shooter, as he was at another location at the time of this crime (T.188). Although defense counsel did not file formal written notice of alibi, the State waived any objection to lack of a written filing (T.16). The prosecutor then proceeded to unfairly question the lead detective on whether he had the opportunity to investigate any alibis of the defense (T.402). His clear purpose was two-fold: 1) to attack the credibility of defense counsel - who discussed alibi in his opening statement; and 2) to create the misimpression that the alibi was a sham. Even after an objection was sustained, the prosecutor deliberately disregarded the judge's ruling and continued the questioning until he got the answer that he so desired - that the detective had never received any notice of alibi (T.402, 403). Despite a curative instruction (T.407-

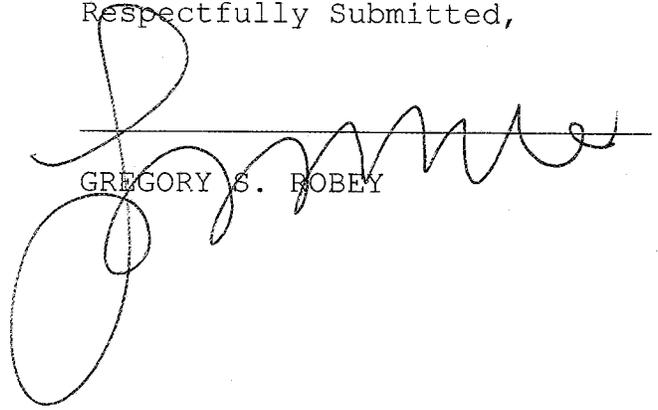
408), the damage had been done. The credibility of defense counsel was destroyed, and the alibi defense was abandoned. No alibi witnesses were called, nor was alibi ever argued in closing argument (T.511-519). In sum, the prosecutor's misconduct changed the entire nature of the trial and robbed Appellant of his right to a fair trial. **State v. Hicks (2011), 194 Ohio App.3d 743, 2011-Ohio-3578; State v. Daugherty (1987), 41 Ohio App.3d 91.**

There is simply no good reason why appellate counsel would not raise this issue on direct appeal. While it is clear that counsel does not need to raise every possible issue, **Jones v. Barnes (1983), 463 U.S. 745**; this was not some minor or collateral issue. To the contrary, this was a critical issue that went to the heart of whether Appellant received a fair trial. In short, the failure of appellate counsel to raise this critical issue on appeal was inexcusable ineffective assistance of counsel. **See generally State v. Chapman (1996), 112 Ohio App.3d 607; State v. Rowland (2000), 138 Ohio App.3d 473; State v. Rozanski, 2003-Ohio-3454.**

IV. CONCLUSION

For all the foregoing reasons, this Court should reverse the decision of the lower appellate court and remand it for further proceedings, in order to clarify the law of Ohio on this vital point, which is of great importance to not only Appellant, but all others who will follow.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Gregory S. Robey', is written over a horizontal line. The signature is stylized and cursive.

GREGORY S. ROBEY

SEP 23 2014

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Andrea Rocco, Clerk of Courts

STATE OF OHIO

Appellee

COA NO.
90845

LOWER COURT NO.
CR-07-494311-A

COMMON PLEAS COURT

-vs-

PATRICK WILLIAMS

Appellant

MOTION NO. 475308

Date 09/23/14

Journal Entry

Motion by appellant for leave to reopen appeal is denied. See journal entry and opinion of same date.

FILED AND JOURNALIZED
PER APP.R. 22(C)

SEP 23 2014

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By [Signature] Deputy

Judge KENNETH A. ROCCO, Concur

Judge EILEEN T. GALLAGHER, Concur

[Signature]
FRANK D. CELEBREZZE, JR.
Presiding Judge

SEP 23 2014

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 90845

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

PATRICK WILLIAMS

DEFENDANT-APPELLANT

**JUDGMENT:
APPLICATION DENIED**

Cuyahoga County Court of Common Pleas
Case No. CR-07-494311-A
Application for Reopening
Motion No. 475308

RELEASE DATE: September 23, 2014

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FILED AND JOURNALIZED
PER APP.R. 22(C)

SEP 28 2014

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By Deputy

FRANK D. CELEBREZZE, JR., P.J.:

{¶1} Patrick Williams has filed an application for reopening pursuant to App.R. 26(B). Williams is attempting to reopen the appellate judgment, as rendered in *State v. Williams*, 8th Dist. Cuyahoga No. 90845, 2009-Ohio-2026, which affirmed his convictions for aggravated murder, murder, and felonious assault. For the reasons that follow, the application to reopen is denied.

{¶2} The appellate judgment was released on April 30, 2009, and journalized on May 11, 2009. The application for reopening was not filed until May 29, 2014. This falls well outside the time limits of App.R. 26(B)(1), which requires applications to be filed within 90 days after journalization of the appellate judgment. The only exception that would permit us to review an untimely application is if applicant establishes good cause for filing at a later time. *Id.*

{¶3} The Supreme Court of Ohio, with regard to the 90-day deadline provided by App.R. 26(B)(2)(b), has firmly established that

[c]onsistent 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 the other hand that any claims of ineffective assistance of appellate counsel are promptly examined and resolved.

Ohio and other states "may erect reasonable procedural requirements for triggering the right to an adjudication," *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437, 102 S.Ct 1148, 71 L.Ed.2d 265 (1982), and that is what Ohio has done by creating a 90-day deadline for the filing of applications to reopen. [The

applicant] could have retained new attorneys after the court of appeals issued its decision in 1994, or he could have filed the application on his own. What he could not do was ignore the rule's filing deadline. * * * The 90-day requirement in the rule is "applicable to all appellants," *State v. Winstead* (1996), 74 Ohio St.3d 277, 278, 1996-Ohio-52, 658 N.E.2d 722, and [the applicant] offers no sound reason why he — unlike so many other Ohio criminal defendants — could not comply with that fundamental aspect of the rule.

State v. Gumm, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, at ¶ 7. See also *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970; *State v. Coeey*, 73 Ohio St.3d 411, 653 N.E.2d 252 (1995); *State v. Reddick*, 72 Ohio St.3d 88, 647 N.E.2d 784 (1995).

{¶4} Applicant has failed to establish "good cause" for the untimely filing of his application for reopening. He maintains that there is good cause for his delayed filing because he has had "no personal contact" with his appointed appellate lawyer, and he did not receive copies of the appellate filings nor notice of the decision. Additionally, applicant asserts that he was only 17 years old at the time of the trial and relied on his appellate lawyer to raise all possible issues, to his detriment.

{¶5} Applicant cites no case that has found any of the foregoing grounds as good cause for an application to reopen that is filed approximately five years after the appellate decision was journalized. However, there is ample authority that has found these reasons do not establish good cause for an untimely application to reopen.

{¶6} Appellate counsel cannot be considered ineffective for failing to raise every conceivable assignment of error on appeal. *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983); *Gumm, supra*; *State v. Campbell*, 69 Ohio St.3d 38, 630 N.E.2d 339 (1994). The United States Supreme Court has upheld the appellate attorney's discretion to decide which issues he or she believes are the most fruitful arguments and the importance of winnowing out weaker arguments on appeal and focusing on one central issue or at most a few key issues. *Jones*.

{¶7} It is well settled that "neither misplaced reliance on counsel nor lack of communication between counsel and appellant provides good cause for a late filing of his application for reopening." *State v. Gray*, 8th Dist. Cuyahoga No. 92646, 2012-Ohio-3565, ¶ 3, citing *State v. Alt*, 8th Dist. Cuyahoga No. 96289, 2012-Ohio-2054; *State v. Austin*, 8th Dist. Cuyahoga No. 87169, 2012-Ohio-1338; *State v. Alexander*, 8th Dist. Cuyahoga No. 81529, 2004-Ohio-3861.

{¶8} Citing the applicant's young age is the equivalent of arguing that his ignorance of the law or lack of legal training and knowledge should establish good cause for the delayed filing. However, it is equally well established that these grounds do not provide good cause to allow review of an application that is filed five years beyond the deadline. See *State v. Mosley*, 8th Dist. Cuyahoga No. 79463, 2005-Ohio-4137, ¶ 4 ("it is well-established that a lack of legal

training does not establish 'good cause' for the untimely filing of an application for reopening").

{¶9} Applicant also "cannot rely on his own alleged lack of legal training to excuse his failure to comply with the deadline. 'Lack of effort or imagination, and ignorance of the law * * * do not automatically establish good cause for failure to seek timely relief' under App.R. 26(B)." *LaMar*, 102 Ohio St.3d 467 at ¶ 9, quoting *Reddick*, 72 Ohio St.3d at 91.

{¶10} It is proper to deny applications for reopening solely on the basis that they are untimely filed and without good cause for the delay. *Gumm*, 103 Ohio St.3d 162, and *LaMar*. Applicant's failure to demonstrate good cause is a sufficient basis for denying his application for reopening. *See, e.g., State v. Almashni*, 8th Dist. Cuyahoga No. 92237, 2010-Ohio-898, *reopening disallowed*, 2012-Ohio-349.

{¶11} Applicant has not established good cause for filing an untimely application for reopening.

{¶12} Accordingly, the application for reopening is denied.


FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

KENNETH A. ROCCO, J., and
EILEEN T. GALLAGHER, J., CONCUR