

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :  
Appellee, : Supreme Court Case No. 2011-2005  
-vs- :  
JASON DEAN, : **This is a capital case.**  
Appellant. :

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**ON APPEAL FROM THE CLARK COUNTY COURT OF COMMON PLEAS  
CLARK COUNTY, OHIO, CASE NO. 05 CR 0348**

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**APPELLANT DEAN'S MOTION TO STRIKE APPELLEE'S ARGUMENT TO DISMISS  
HIS APPLICATION FOR REOPENING AS UNTIMELY**

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Appellant Jason Dean, through counsel, moves this Court to strike Appellee's argument that Dean's Application for Reopening is untimely or page one of Appellee's Opposition to Reopening. Appellee's argument is inaccurate and misleading. At a minimum, Appellee's argument reflects a failure to review the Supreme Court Rules of Practice or check this Court's docket. Thus, Appellee has filed an impertinent argument. Further reasons for this request are set forth in the attached memorandum.

Respectfully submitted,



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## MEMORANDUM IN SUPPORT

On April 19, 2016, Appellant Jason Dean filed his Application for Reopening with this Court. On May 13, 2016, Appellee filed its response. On page one Appellee asserts that Dean's Application to Reopen is untimely and is "85 days out-of-rule." This assertion is completely inaccurate.

### **The Supreme Court Rules of Practice.**

A party litigating before this Court should be guided by the Supreme Court Rules of Practice. S.Ct. Prac. R. 11.06 is entitled "Application for Reopening." S.Ct.Prac. 11.06(A) states:

An appellant in a death-penalty case involving an offense committed on or after January 1, 1995, may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel in the Supreme Court. An application for reopening shall be filed within ninety days of the mandate of the Supreme Court unless the applicant shows good cause for filing at a later time.

In Dean's case, direct appeal counsel filed a motion for reconsideration after the opinion was issued. On January 20, 2016, this Court filed its decision denying reconsideration and issued its mandate to the clerk that same day. The docket clearly reflects that the date for the mandate is January 20, 2016. April 19, 2016 is ninety days out from January 20, 2016. Thus, Dean timely filed his Application for Reopening on April 19, 2016.

### **Appellee's untimely filing argument cannot serve as a basis for dismissing Appellant's Application for Reopening.**

Ohio Civil Procedure Rule 12(f) authorizes a court to "strike from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter." In Dean's case, Appellee's argument that this Court should not even consider his Application for Reopening because it is belated and "no good cause" was offered for an "85-day delay" is grossly inaccurate. A quick check of this Court's rules, the docket, and the calendar shows that the clerk

properly accepted Dean's filing. Appellee's "untimely" argument is ultimately impertinent or irrelevant as it cannot serve as a basis for dismissing Dean's Application for Reopening and refusing to consider the merits. At a minimum, Appellee's argument must be soundly rejected.

**Conclusion.**

The Supreme Court Rules of Practice should guide the parties in litigation before the Court. Pursuant to S.Ct.R.Prac. 11.06, Appellant Dean properly and timely filed his Application for Reopening. Appellee's assertion that Dean's filing should be dismissed as "untimely" and "85 days out-of-rule" is grossly inaccurate. Appellee's argument is an incorrect basis for dismissal and, therefore, impertinent. Thus, Appellee's argument for the dismissal of Dean's Application for Reopening as untimely should be stricken from its Opposition to Reopening. Dean's Application for Reopening should be reviewed on the merits.

Respectfully submitted,



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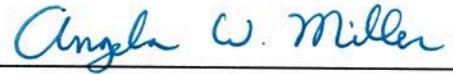
Counsel for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that on May 19, 2016, I served a copy of the foregoing by regular United

States mail addressed to:

Mr. D. Andrew Wilson  
Clark Co. Prosecuting Atty.  
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