

[Cite as *State v. Fields*, 2021-Ohio-201.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 107971
 v. :
 :
 KURTIS FIELDS, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: January 22, 2021

Cuyahoga County Court of Common Pleas
Case No. CR-17-620952-C
Application for Reopening
Motion No. 543267

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Fallon M. Radigan, Assistant Prosecuting Attorney, *for appellee*.

Kurtis Fields, *pro se*.

PATRICIA ANN BLACKMON, P.J.:

{¶ 1} On January 6, 2021, the applicant, Kurtis Fields, pursuant to App.R. 26(B) applied to reopen this court's judgment in *State v. Fields*, 8th Dist. Cuyahoga No. 107971, 2020-Ohio-4740, in which this court affirmed his convictions and

sentences for murder and having a weapon while under disability, both with three-year firearm specifications and a repeat violent offender specification. Fields submits that his appellate counsel should have argued the following: (1) the state violated his Fifth Amendment right against self-incrimination by forcing him to show his tattoos to the jury and (2) his trial counsel was ineffective for failing to move for a mistrial on the tattoo issue and for failing to show through effective cross-examination that the lead detective perjured himself. For the following reasons, this court denies the application.

{¶ 2} On February 26, 2015, Tyrone Rodgers and Jasmine and Jerica Mathis were arguing in the hallway of Jasmine’s apartment building after Jasmine had asked Tyrone to leave her residence. A surveillance video showed that two men entered the apartment building. One man passed a gun to the other, and that man shot and mortally wounded Tyrone. At trial, two witnesses identified Fields as the shooter, including the man who passed the gun. A jury found Fields guilty of two counts of murder and two counts of felonious assault with one- and three-year firearm specifications. The judge found him guilty of having a weapon while under disability, as well as notice of prior conviction and repeat violent offender specifications. The judge merged various offenses and sentenced Fields to 34 years to life.

{¶ 3} Fields’s appellate counsel argued that the convictions were against the manifest weight of the evidence, that it was improper to impose maximum consecutive sentences, and that trial counsel was ineffective for failing to file a

motion to dismiss for preindictment delay, for failing to seek the disqualification of the trial court judge for engaging in an ex parte discussion, and for failing to object to improper expert witness testimony.

{¶ 4} App.R. 26(B)(1) and (2) require applications claiming ineffective assistance of appellate counsel to be filed within 90 days from journalization of the decision unless the applicant shows good cause for filing at a later time. This court issued its decision on October 1, 2020, and Fields's application was filed seven days late on January 6, 2021 [30 (days remaining in October) + 30 (November) + 31 (December) + 6 (January) = 97]. Fields did not proffer any good cause for the late filing, but the court notes that his application's certificate of service bears the date of December 20, 2020.

{¶ 5} The Supreme Court of Ohio in *State v. LaMar*, 102 Ohio St.3d 467, 2004- Ohio-3976, 812 N.E.2d 970, and *State v. Gumm*, 103 Ohio St.3d 162, 2004- Ohio4755, 814 N.E.2d 861, held that the 90-day deadline for filing must be strictly enforced. In those cases, the applicants argued that after the court of appeals decided their cases, their appellate lawyers continued to represent them, and their appellate lawyers could not be expected to raise their own incompetence. Although the Supreme Court agreed with this latter principle, it rejected the argument that continued representation provided good cause. In both cases, the court ruled that the applicants could not ignore the 90-day deadline, even if it meant retaining new counsel or filing the applications themselves. The court then reaffirmed the

principle that lack of effort, lack of imagination, and ignorance of the law do not establish good cause for failure to seek timely relief under App.R. 26(B).

{¶ 6} As a corollary, miscalculation of the time needed for mailing also does not state good cause. *State v. Winstead*, 74 Ohio St.3d 277, 1996-Ohio-52, 658 N.E.2d 722, is particularly instructive. *Winstead* hired an overnight courier to deliver his App.R. 26(B) application. However, the courier filed it a day late. The Supreme Court of Ohio affirmed the denial of the application as untimely, because the courier's delay was not good cause and because there was no denial of due process or equal protection in applying a rule applicable to all appellants. *See also State v. Agosto*, 8th Dist. Cuyahoga No. 87283, 2006-Ohio-5011, *reopening disallowed* 2007-Ohio-848; and *State v. Peyton*, 8th Dist. Cuyahoga No. 86797, 2006-Ohio-3951, *reopening disallowed*, 2007-Ohio-263 — App.R. 26(B) application to reopen denied as untimely because it was filed two days late.

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

PATRICIA ANN BLACKMON, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
LISA FORBES, J., CONCUR