[Cite as *State v. Hall*, 2020-Ohio-2712.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 106943
v.	:	
MILTON HALL,	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: April 29, 2020

Cuyahoga County Court of Common Pleas
Case No. CR-17-617366-A
Application for Reopening
Motion No. 534259

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Anthony T. Miranda, Assistant Prosecuting Attorney, *for appellee*.

Milton A. Hall, *pro se*.

EILEEN A. GALLAGHER, J.:

{¶ 1} On December 6, 2019, the applicant, Milton Hall, pursuant to App.R. 26(B) and *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992), applied to reopen this court's judgment in *State v. Hall*, 8th Dist. Cuyahoga No. 106943,

2019-Ohio-341, in which this court affirmed Hall's convictions and sentences for rape, sexual battery, endangering children, domestic violence, and importuning.[1] Hall now asserts that his appellate counsel should have argued that (1) his convictions were against the manifest weight of the evidence, (2) prosecutorial misconduct denied him due process, (3) denial of access to the proceedings denied him due process, (4) the trial court erred by not commencing trial in a timely fashion, (5) he was denied the effective assistance of trial counsel and (6) the cumulative impact of errors amounted to a denial of due process. The state of Ohio filed its brief in opposition on January 2, 2020. For the following reasons, this court denies the application to reopen.

{¶ 2} App.R. 26(B)(1) and (2)(b) 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. The December 2019 application was filed more than ten months after this court's decision. Thus, it is untimely on its face.

{¶ 3} In his application, Hall stated that he should not be treated unfairly when he was clearly claiming actual innocence and at the time was unaware of the

[1] The grand jury indicted Hall for one count of rape against his then 14-year-old daughter and 154 counts of rape, attempted rape, kidnapping, gross sexual imposition, endangering children, domestic violence, sexual battery, and importuning against his adopted daughter. Hall pled guilty to 8 counts of rape, 5 counts of sexual battery, 2 counts of endangering children and one count each of domestic violence and importuning. The other counts were nolled. The trial judge sentenced him to an aggregate term of 4o years.

law, but has learned more since then. Hall does not explicitly proffer these reasons as good cause for an untimely filing, but the court will consider them as such.

{¶ 4} The courts have consistently ruled that ignorance of the law does not provide sufficient cause for untimely filing. *State v. Klein*, 8th Dist. Cuyahoga No. 58389, 1991 Ohio App. LEXIS 1346, *reopening disallowed* (Mar. 15, 1994), motion No. 249260, *aff'd*, 69 Ohio St.3d 1481, 634 N.E.2d 1027 (1994) and *State v. Marshall*, 8th Dist. Cuyahoga No. 87334, 2019-Ohio-1114.

{¶ 5} Moreover, the bare allegation that he was claiming actual innocence, especially in the face of his guilty plea, does not demonstrate actual innocence such that it could establish good cause for untimely filing. *State v. Jordan*, 8th Dist. Cuyahoga No. 73453, 2015-Ohio-4977.

{¶ 6} App.R. 26(B)(2) requires that an application to reopen contain a "sworn statement of the basis for the claim that appellate counsel's representation was deficient with respect to the assignments of error raised." Although Hall attached affidavits to other motions he filed, he did not attach an affidavit supporting his application to reopen. Thus, the application is fatally defective. *State v. Lechner*, 72 Ohio St.3d 374, 1995-Ohio-25, 650 N.E.2d 449.

{¶ 7} Finally, Hall merely lists his assignments of error and does not proffer any argument for them. He attaches to his applications excerpts from *Imbler v. Pachtman*, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976), in which the Supreme Court ruled that prosecutors have immunity from civil suits. It might be easy to infer and speculate that he is arguing that the prosecutor induced his children to lie about

what he did to them and that his trial attorney did not do what Hall wanted him to do. However, inference and speculation is not argument, and the court should not do that. Lack of argument is fatal to an application to reopen. *State v. Hess*, 7th Dist. Jefferson No. 02 JE 36, 2004-Ohio-1197.

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

EILEEN A. GALLAGHER, JUDGE

ANITA LASTER MAYS, P.J., and
MICHELLE J. SHEEHAN, J., CONCUR