

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150050
Plaintiff-Appellee,	:	TRIAL NO. B-0902585
vs.	:	<i>JUDGMENT ENTRY.</i>
JERRY JONES,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Jerry Jones appeals from the Hamilton County Common Pleas Court's judgment denying his Crim.R. 33 motion for leave to file a motion for a new trial. We affirm the court's judgment.

Jones was convicted in 2011 of murder and having weapons under a disability. He unsuccessfully challenged his convictions on direct appeal, *State v. Jones*, 1st Dist. Hamilton No. C-110059, 2011-Ohio-6633, *appeal not accepted*, 131 Ohio St.3d 1552, 2012-Ohio-2263, 967 N.E.2d 763, and in his motion, filed with the common pleas court in 2014, seeking leave to move for a new trial. In this appeal, Jones advances a single assignment of error, challenging the overruling of that motion.

In his motion, Jones sought leave pursuant to Crim.R. 33(B), to move for a new trial under Crim.R. 33(A)(1), (2), (4), and (6) on grounds that the trial court had denied him a fair trial, that his convictions had been the product of prosecutorial and witness

misconduct and his trial counsel's ineffectiveness, and that newly discovered evidence demonstrated his actual innocence.

A Crim.R. 33(A)(6) motion for a new trial on the ground of newly discovered evidence must be filed either within 120 days of the return of the verdict or within seven days after leave to file a new-trial motion has been granted. A motion for a new trial on grounds other than newly discovered evidence must be filed either within 14 days of the return of the verdict or within seven days after leave has been granted. Crim.R. 33(B). Leave to file a new-trial motion out of time is discretionary with the court. When the ground advanced is newly discovered evidence, leave may be granted only upon "clear and convincing proof that the defendant [had been] unavoidably prevented from [timely] discovering the evidence." With any other ground, leave may be granted only upon "clear and convincing proof that the defendant [had been] unavoidably prevented from [timely] filing [his new-trial] motion." Crim.R. 33(B).

Jones did not timely move for a new trial. And the record is devoid of evidence demonstrating unavoidable prevention. Therefore, we cannot say that the common pleas court abused its discretion in overruling Jones's motion for leave to file a new-trial motion. Accordingly, we overrule the assignment of error and affirm the court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., DEWINE and MOCK, JJ.

To the clerk:

Enter upon the journal of the court on October 19, 2016
per order of the court_____.

Presiding Judge