

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

STATE OF OHIO,	:	APPEAL NO. C-220347
	:	TRIAL NO. B-1206465
Plaintiff-Appellee,	:	
vs.	:	<i>OPINION.</i>
DAVID WALKER,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed as Modified

Date of Judgment Entry on Appeal: July 7, 2023

Melissa A. Powers, Hamilton County Prosecuting Attorney, and *Philip R. Cummings*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

David Walker, pro se.

BOCK, Judge.

{¶1} Defendant-appellant David Walker appeals the Hamilton County Common Pleas Court’s judgment denying his motion for a new trial. For the following reasons, we affirm the common pleas court’s judgment as modified to reflect a dismissal—rather than a denial—of Walker’s new-trial motion.

{¶2} Following an August 2015 jury trial, Walker was convicted of murder, aggravated robbery, firearm specifications, and having a weapon while under a disability. The trial court imposed an aggregate sentence of 32 years to life imprisonment. Walker unsuccessfully challenged his convictions and sentence on direct appeal. *State v. Walker*, 1st Dist. Hamilton No. C-150620, 2017 Ohio App. LEXIS 1772 (Apr. 28, 2017), *appeal not accepted*, 150 Ohio St.3d 1445, 2017-Ohio-7843, 82 N.E.3d 1177.

{¶3} In January 2022, Walker moved for a new trial under Crim.R. 33(A)(1) on the grounds of irregularity in the proceedings, which prevented him from having a fair trial. Specifically, Walker argued that the trial court’s numerous errors, which included the admission of unreliable witness-identification testimony, a jury instruction on complicity, and the exclusion of Walker’s videotaped statement to police, as well as defense counsel’s alleged ineffective representation, led to an unfair trial. After reviewing Walker’s motion, the common pleas court denied it as “not well-taken.”

{¶4} Walker now appeals, raising three assignments of error challenging the denial of his motion for a new trial. We decline to address these assignments because the common pleas court lacked jurisdiction to consider the merits of Walker’s new-trial motion. *See State v. Bethel*, 167 Ohio St.3d 362, 2022-Ohio-783, 192 N.E.3d 470, ¶ 41 (holding that “until a trial court grants leave to file a motion for a new trial, the [untimely filed] motion for a new trial is not properly before the court”).

{¶5} A new-trial motion on the grounds of an “irregularity in the proceedings” must be filed within 14 days of the verdict. If not filed within the applicable timeframe, the new-trial motion may be filed within seven days after the common pleas court grants leave to file a new-trial motion. Crim.R. 33(B). Here, Walker filed his new-trial motion seven years after the return of the jury verdicts. Because his motion was untimely, he was required to seek leave to file the new-trial motion, but he did not do so. Because Walker did not comply with Crim.R. 33(B), the new-trial motion was not properly before the court and should have been dismissed. *See State v. Martin*, 1st Dist. Hamilton No. C-210644, 2022-Ohio-2372, ¶ 9 (where the trial court lacked jurisdiction to entertain the untimely filed new-trial motion, it was subject to dismissal).

{¶6} Accordingly, we modify the common pleas court’s judgment denying Walker’s motion for a new trial to reflect its dismissal, *see* App.R. 12(A)(1)(a), and affirm the lower court’s judgment as modified.

Judgment affirmed as modified.

BERGERON, P.J., and KINSLEY, J., concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.