

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

STATE OF OHIO,	:	APPEAL NO. C-140680
Plaintiff-Appellee,	:	TRIAL NO. B-1106572
vs.	:	<i>JUDGMENT ENTRY.</i>
WILLIAM FEARS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant William Fears presents on appeal two assignments of error that, distilled to their essence, challenge the Hamilton County Common Pleas Court’s judgment overruling his Crim.R. 33(B) motion seeking leave to move for a new trial out of time. We affirm the court’s judgment.

Fears was convicted in 2012 of telecommunications fraud and theft. He unsuccessfully challenged his convictions in his direct appeal to this court and in a series of postconviction motions. *See State v. Fears*, 1st Dist. Hamilton No. C-120585 (May 24, 2013).

In 2013, Fears filed a motion seeking a new trial on grounds of actual innocence, prosecutorial misconduct, insufficient evidence, and inadmissible evidence, and seeking leave to move for a new trial out of time. The common pleas court found that Fears failed to demonstrate his claim that he had been “unavoidably prevented” from timely moving for a new trial by his appellate counsel’s failure to provide him with a transcript

of proceedings until after our decision in his direct appeal. On that basis, the court denied leave to file a new-trial motion. We affirmed the court's judgment. *State v. Fears*, 1st Dist. Hamilton No. C-140082 (Sept. 5, 2014).

In 2014, Fears again moved for leave to move for a new trial. In his motion, Fears restated his claims of actual innocence, prosecutorial misconduct, insufficient evidence, and inadmissible evidence. And he again claimed unavoidable prevention for his filing delay based on appellate counsel's failure to timely provide him with a transcript of proceedings. The common pleas court denied leave, and this appeal followed.

Under the doctrine of the law of the case, an inferior court confronted with substantially the same facts and issues involved in a prior appeal is bound by a superior court's determination of those issues. *See Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984); *Perez v. Cleveland*, 1st Dist. Hamilton No. C-940553, 1995 Ohio App. LEXIS 5436 (Dec. 13, 1995). The law of our decision in the case numbered C-140082 precluded the common pleas court from granting Fears's 2014 motion for leave to file a new-trial motion. Therefore, the court did not err in denying leave.

Accordingly, we overrule the assignments of error and affirm the judgment of the common pleas court.

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.

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

To the clerk:

Enter upon the journal of the court on July 17, 2015
per order of the court _____.

Presiding Judge