

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

STATE OF OHIO,	:	APPEAL NO. C-150069
Plaintiff-Appellee,	:	TRIAL NO. B-1007154
vs.	:	<i>JUDGMENT ENTRY.</i>
MICHAEL JONES,	:	
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 Michael Jones appeals from the Hamilton County Common Pleas Court's judgment overruling his motion for a new trial. We affirm the court's judgment.

Jones was convicted in 2011 upon jury verdicts finding him guilty of murder with a firearm specification and was sentenced to 18 years to life. He unsuccessfully challenged his conviction in direct appeals to this court and the Ohio Supreme Court, *State v. Jones*, 1st Dist. Hamilton No. C-110709 (Sept. 5, 2012), *appeal not accepted*, 134 Ohio St.3d 1422, 2013-Ohio-158, 981 N.E.2d 886, and in several postconviction motions. In this appeal, he advances two assignments of error that, read together, challenge the denial of a hearing and the relief sought in his September 2014 motion for a new trial.

In his motion, Jones sought a new trial on the ground that his trial counsel had been ineffective in failing to reasonably investigate his case and in counseling him to reject the state's plea offer of voluntary manslaughter with a 13-year prison sentence. He

argued that a reasonable investigation would have disclosed that, in 2004 in Butler County, Ohio, a key state's witness had been involved in a "closely similar situation," demonstrating that the witness "constantly engag[ed] in activities involving alcohol and could not therefore be[] a reliable witness." He also argued that, in rejecting the plea offer made by the state after another state's witness had changed his statement, he had relied upon trial counsel's "assur[ance]" that he would be acquitted. Jones supported his motion with his own affidavit attesting to these matters. And he insisted that, but for counsel's inadequate investigation and "inaccurate prediction" of an acquittal, he would have accepted the plea offer.

Crim.R. 33 governs the proceedings on a motion for a new trial. Under the rule, a 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. And 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).

Jones filed his new-trial motion over two years after the verdicts were returned in his case. 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).

The decision whether to conduct an evidentiary hearing on a motion for leave is also discretionary. Generally, a hearing is warranted only when the motion is supported

by evidentiary material that, on its face, demonstrates unavoidable prevention. See *State v. Carusone*, 1st Dist. Hamilton No. C-130003, 2013-Ohio-5034, ¶ 31-33.

Jones did not timely move for a new trial. Nor did he move to file his new-trial motion out of time. And the record is devoid of evidence demonstrating unavoidable prevention. Therefore, we cannot say that the common pleas court abused its discretion in denying, without a hearing, the relief sought in Jones's motion. Accordingly, we overrule the assignments 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.

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

To the clerk:

Enter upon the journal of the court on December 23, 2015,
per order of the court _____.

Presiding Judge