

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

STATE OF OHIO,	:	APPEAL NO. C-190190
	:	TRIAL NO. B-9704985
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
NIAROBI TEASLEY,	:	
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 Niarobi Teasley presents on appeal four assignments of error that, distilled to their essence, challenge the Hamilton County Common Pleas Court's judgment denying the relief sought in his Crim.R. 33(B) motion for leave to move for a new trial. We overrule the assignments of error and affirm the court's judgment as modified to overrule the motion.

In 1997, Teasley was convicted of aggravated murder. He unsuccessfully challenged his conviction on direct appeal and in postconviction motions filed in 1997, 1999, and 2017. *State v. Teasley*, 1st Dist. Hamilton No. C-980041, 1999 WL 252473 (Apr. 30, 1999), *appeal not allowed*, 86 Ohio St.3d 1463, 715 N.E.2d 566 (1999); *State v. Teasley*, 1st Dist. Hamilton No. C-990722 (Aug. 30, 2000); *State v. Teasley*, 1st Dist. Hamilton No. C-170665 (Nov. 30, 2018).

In 2019, Teasley filed with the common pleas court a motion pursuant to Crim.R. 33(B), seeking leave to file a motion for a new trial on the ground that he had been denied his constitutional rights to counsel and to the effective assistance of counsel, when he was “subjected to hybrid legal representation pre-trial,” after his appointed counsel and the trial court had “made a deal to have defendant proceed pro se on an as-needed-basis.” The court dismissed the motion upon its determination that the motion did not satisfy the jurisdictional requirements of R.C. 2953.21 et seq., governing the proceedings on a petition for postconviction relief.

We note at the outset that Teasley’s motion properly sought leave under Crim.R. 33(B) to move for a new trial. Therefore, the common pleas court was not free to “recast” the motion and dismiss it for lack of jurisdiction under the postconviction statutes. *See State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12 and syllabus. But the ultimate effect of that dismissal was to deny Teasley leave to move for a new trial. And our review of the record confirms that leave was properly denied, albeit for the wrong reason. *See State v. Peagler*, 76 Ohio St.3d 496, 668 N.E.2d 489 (1996), paragraph one of the syllabus (holding that “an appellate court may decide an issue on grounds different from those determined by the trial court,” provided that “the evidentiary basis upon which the court of appeals decides a legal issue [has] been adduced before the trial court and [has] been made a part of the record thereof”); *State v. Blankenship*, 38 Ohio St.3d 116, 119, 526 N.E.2d 816 (1988) (noting that a reviewing court will affirm a court that “reached the correct result even though for the wrong reason”).

In his Crim.R. 33(B) motion, Teasley sought leave to move for a new trial on grounds other than newly discovered evidence. Thus, he bore the burden of proving by clear and convincing evidence that he had been unavoidably prevented from timely filing his new-trial motion. *See Crim.R. 33(B); State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990). The common pleas court’s decision denying leave may not be

overturned on appeal if it was supported by some competent and credible evidence. *Schiebel* at 74; *State v. Mathis*, 134 Ohio App.3d 77, 79, 730 N.E.2d 410 (1st Dist.1999), *rev'd in part on other grounds*, *State v. Condon*, 157 Ohio App.3d 26, 2004-Ohio-2031, 808 N.E.2d 912, ¶ 20 (1st Dist.).

Teasley failed to sustain his burden of demonstrating that he had been unavoidably prevented from timely moving for a new trial on the ground that the “hybrid legal representation” to which he had been “subjected” had denied him his constitutional rights to counsel and to the effective assistance of counsel. In his motion for leave, he cited as cause for his filing delay his trial counsel’s failure to advise him concerning the time for filing a motion for a new trial. But he offered no evidence outside the record to support either that assertion or his proposed ground for a new trial. And the record shows that he had, in 1998, in both his direct appeal and a new-trial motion filed two days after his conviction, alleged violations of his rights to self-representation and the effective assistance of counsel.

The common pleas court’s decision denying leave was thus supported by some competent and credible evidence. Accordingly, upon the authority of App.R. 12(A)(1)(a), we modify the judgment appealed from to reflect the overruling of Teasley’s Crim.R. 33(B) motion for leave to move for a new trial. And we affirm the judgment as modified.

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

MOCK, P.J., ZAYAS and BERGERON, JJ.

To the clerk:

Enter upon the journal of the court on March 13, 2020,
per order of the court _____.

Presiding Judge