



State v. Parsons

2024-Ohio-3367 (2024) | Cited 0 times | Ohio Court of Appeals | September 3, 2024

IN THE COURT OF APPEALS OF OHIO THIRD APPELLATE DISTRICT HENRY COUNTY
STATE OF OHIO, CASE NO. 7-23-20 PLAINTIFF-APPELLEE,

v.

CULLEN PARSONS, O P I N I O N

DEFENDANT-APPELLANT.

Appeal from Henry County Common Pleas Court Trial Court No. 15CR0082

Judgment Reversed and Cause Remanded

Date of Decision: September 3, 2024

APPEARANCES:

Michael G. Aird and Michael H. Stahl for Appellant

Gwen Howe-Gebbers for Appellee MILLER, J.

{¶1} Defendant-Appellant, Cullen Parsons Parsons , appeals the

October 23, 2023 judgment issued by the Henry County Court of Common Pleas

denying his motion for leave to file an untimely motion for a new trial. Among his

arguments on appeal, Parsons contends that the trial court applied an incorrect legal

standard in deciding the motion. For the reasons that follow, we agree with that

contention, reverse and remand for further proceedings

consistent with this opinion.



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I. FACTS AND PROCEDURAL HISTORY

{¶2} On October 1, 2015, Parsons was indicted on counts for attempted murder, felonious assault, and improper handling of a firearm in a motor vehicle (along with various specifications for each count). Parsons waived his right to a jury trial, and a two-day bench trial took place on March 7 and 8, 2016. The trial court found Parsons guilty of the three charged offenses, along with a firearm specification under R.C. 2941.146 for each of the first two offenses. The trial court then sentenced Parsons to a total of 12 years in prison.

{¶3} to File Delayed Motion for A New Trial Based Upon Newly Discovered Evidence the trial court newly discovered evidence, previously unavailable to [him] and procured through a relied on four pieces of (alleged) newly discovered evidence and argued they demonstrated that a witness for the State who had testified he heard Parsons admit to the shooting at issue testified falsely at the trial.

{¶4} On July 20, 2023, the trial court held a hearing on the motion for leave. The State opposed the motion, arguing Parsons had not established, by clear and convincing proof, that he was unavoidably prevented from discovering the evidence. 1 (See Aug. 28, 2023 Motion in Opposition for Leave to File for New Trial at 9). On October 23, 2023, the trial court issued a judgment denying the motion for leave.

the Defendant was unavoidably prevented from discovering any evidence



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but, rather,

Motion fails under the due process analysis, as he has failed to demonstrate materiality, the Court need not determine whether he was unavoidably prevented from filing his motion in a timely fashion or whether he demonstrated that the State 1 at 9). evidence. (Emphasis added) (Id. at 9). The trial court denied the motion for leave, and Parsons then initiated this appeal.

II. ASSIGNMENT OF ERROR

Parsons raises a single assignment of error for our review:

Assignment of Error

The trial court abused its discretion by applying the incorrect standard State has no obligation to provide cell-assignment records even when they are materially exculpatory, and by making findings regarding the materiality of the new evidence that are [i]nconsistent with the record.

III. DISCUSSION

{¶5} Parsons argues that the trial court applied an incorrect standard in deciding the motion for leave. As explained below, we agree with this argument and find that the case must be remanded for the trial court to newly decide the motion using the proper standard and procedure, as set forth in Criminal Rule 33.

A. Standard of Review

{¶6}

State v. McNeal, 2022-Ohio-2703,

¶ 13. However, the issue presented here involves whether the court applied the



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proper legal standard and procedure, as set forth in Crim.R. 33, in deciding the

motion for leave. Id. (explaining that courts lack discretion to

make errors of law, particular language of a statute or rule); see also *Ohio Edison Co. v. Pub. Util. Comm. of Ohio*, proper legal standard is a question .

B. Applicable Law

{¶7} Criminal Rule 33 addresses motions for a new trial. Its subsection (A)

(6) When new evidence material to the defense is discovered which the defendant could not with reasonable

Crim.R. 33(A)(6). Crim.R. 33(B) states in pertinent part,

Motions for new trial on account of newly discovered evidence shall be filed within one hundred twenty days after the day upon which the verdict was rendered, or the decision of the court where trial by jury has been waived. If it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which he must rely, such motion shall be filed within seven days from an order of the court finding that he was unavoidably prevented from discovering the evidence within the one hundred twenty day period.

{¶8} Therefore, [g]enerally, a motion for a new trial based on newly

discovered evidence must be filed within 120 days after the jury verdict was

State v. Hatton, 2022-Ohio- untimely motion for a new trial based on newly discovered evidence may be filed

only if the defendant first establishes by clear and convincing evidence that he was unavoidably prevented from discovering the evidence within the 120- Id. at ¶ 28. grants a motion for leave to file a motion for a new trial, then the defendant must

file t Id.

{¶9} Thus, the sole question before the trial court when considering

whether to grant a defendant leave to file a motion for a new trial is whether the



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defendant established by clear and convincing proof that he was unavoidably prevented from discovering the evidence upon which he seeks to base the motion.

Id. at ¶ 30. Then, at the motion for new trial stage, the defendant must show among other things that the newly discovered evidence discloses a strong

probability that it will change the result if a new trial is granted. Id. at ¶ 28, 32-33,

citing State v. Petro, 148 Ohio St. 505 (1947), syllabus.

{¶10} Significantly, t

defendant seeks leave to file a motion for a new trial under Crim.R. 33(B), the trial

court may not consider the merits of the proposed motion for a new trial until after

it Id. at ¶ 30, citing State v. Bethel, 2022-Ohio-783, ¶

41.

C. Analysis

{¶11} Parsons seeks a new trial on account of newly discovered evidence,

and it has been seven years since the trial court found him guilty. Therefore, Parsons filed a motion for leave, triggering -step process. Hatton, 2022-

Ohio-3991, at ¶ 29.

{¶12} However, the trial court did not follow procedure and

legal standard. It sidestepped the preliminary question of whether Parsons had

demonstrated that he was unavoidably prevented from discovering the evidence on

which he seeks to rely. Id. at ¶ 32. Instead, the court improperly jumped to the

Id. The trial court decided that based on

what had been presented at the motion for leave stage the newly discovered



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evidence was not material and Parsons was not entitled to a new trial under Crim.R.

33(A)(6), so it did not need to first decide whether he was unavoidably prevented from filing his motion in a timely fashion. Consequently, the court avoided the issue whether to grant him leave to file a motion for a new trial. 2 But, as the Supreme to file a motion for a new trial, the merits of the new-trial claim are not before the Id. at ¶ 33, citing Bethel, 2022-Ohio-783, at ¶ 41; see also Crim.R. 33.

{¶13} The State does not argue otherwise. Instead, the State sets forth the correct standard and asks us to affirm the trial court, essentially seeking a finding by this court that Parsons has not shown he

2 During oral argument before this court, materiality. Additionally, this is not a case, for example, where a defendant who was required to obtain leave

of court before moving for a new trial, instead immediately moved for a new trial without first seeking leave. Crim.R. 33(B). Given the record in this case, we decline

to decide that preliminary, fact-based question. Compare Hatton, 2022-Ohio-3991, at ¶ 34, 42 (remanding matter to the trial court with instructions that it grant or a new trial where defendant

supported his motion for leave with uncontradicted evidence that, on its face, demonstrates that he was unavoidably prevented from discovering . . . the primary evidence upon which he

IV. CONCLUSION

{¶14} The trial court did not apply the proper legal standard and procedure in deciding the motion for leave, as set forth in Criminal Rule 33. Having found



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error prejudicial to Appellant in the particulars assigned and argued, we reverse in its entirety the October 23, 2023 judgment of the Henry County Court of

Common Pleas. We remand the case for the trial court to consider anew, and render a judgment on,

proceedings consistent with this opinion. See App.R. 12; Crim.R. 33; State v.

Francis, 2011-Ohio-4497, ¶ 23, 26 (4th Dist.) (reversing denial of a motion and

remanding the case to the trial court to consider the motion under the proper standard

and for further proceedings consistent with the opinion, where the trial court had

applied the wrong legal standard in denying the motion); State v. Hicks, 2023-Ohio-

4126, ¶ 49, 52 (8th Dist.) (reversing the

further proceedings consistent with the opinion where the trial court erred as a matter of law by applying the incorrect legal standard); see also In re Adoption of

P.L.H., 2017-Ohio-5824, ¶ 33 (below applied the wrong legal standard in deciding motion).

Judgment Reversed and Cause Remanded.

WALDICK and ZIMMERMAN, J.J., concur.

/jlm

