

COURT OF APPEALS OF OHIO, TENTH APPELLATE DISTRICT

State v. Smith

2026-Ohio-912 · No. 25AP-824 · Decided March 19, 2026

SUMMARY

The Ohio Tenth District Court of Appeals affirmed the denial of Thomas L. Smith’s motion for leave to file a delayed motion for a new trial. The court held that Smith did not establish by clear and convincing evidence that he was unavoidably prevented from discovering or filing claims based on an alibi or ineffective assistance of counsel, and it noted that the record contradicted his assertion that counsel failed to file a suppression motion.

CASE DETAILS

COURT	Court of Appeals of Ohio, Tenth Appellate District
WRITING FOR THE COURT	Jamison, J.; Dorrain, J.; Beatty Blunt, J.
JURISDICTION	Ohio Court of Appeals, Tenth Appellate District
DECIDED	March 19, 2026
DOCKET	25AP-824
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed the Franklin County Court of Common Pleas' denial of his motion for leave to file a delayed motion for new trial.
STANDARD OF REVIEW	Abuse of discretion. A trial court's decision granting or denying a motion for leave to file a delayed motion for new trial will not be disturbed absent an unreasonable, arbitrary, or unconscionable exercise of discretion.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Thomas L. Smith v. State of Ohio

TOPICS

- post-conviction relief
- criminal procedure
- appellate procedure
- preservation of error
- suppression of evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying Smith leave to file a delayed motion for new trial.
2. Whether Smith established by clear and convincing evidence that he was unavoidably prevented from discovering the grounds supporting his proposed new-trial motion.
3. Whether Smith's challenge concerning the allegedly suggestive identification was barred by res judicata.

HOLDINGS

1. A defendant seeking leave to file a delayed motion for new trial must establish by clear and convincing evidence that the defendant was unavoidably prevented from filing the motion or discovering the evidence on which it is based. Smith failed to make that showing because he knew of his alleged alibi before trial and knew of counsel's alleged refusal to present it.
2. An alibi known to the defendant before trial is not newly discovered evidence under Crim.R. 33(A)(6), even if the defendant did not present it at trial.
3. Smith could not relitigate his challenge to the allegedly suggestive pretrial identification in a motion for leave to file a delayed motion for new trial because trial counsel had filed and litigated a suppression motion and any further challenge could have been raised in earlier proceedings.

KEY QUOTATIONS

“a party is unavoidably prevented from filing a motion for new trial if the party had no knowledge of the existence of the ground supporting the motion for new trial and could not have learned of the existence of that ground within the time prescribed for filing the motion for new trial in the exercise of reasonable diligence.” (¶ 15)

“In sum, appellant failed to set forth any basis from which the trial court could conclude that he was unavoidably prevented from filing a timely motion for new trial.” (¶ 18)

FACTUAL BACKGROUND

Smith was indicted in 2009 for aggravated murder, murder, attempted murder, felonious assault, aggravated burglary, aggravated robbery, and related firearm specifications. He was convicted after a jury trial and sentenced to life without parole consecutive to 36 years. In 2025, he sought leave to file a delayed motion for new trial, asserting that he had an alibi and that trial counsel had refused to file an alibi notice and a suppression motion. The record showed that Smith knew of the alleged alibi before and during trial and that trial counsel had in fact filed and litigated a motion to suppress the pretrial identification.

PROCEDURAL HISTORY

Smith was convicted in 2009 of aggravated murder and related offenses and received a sentence of life without parole consecutive to 36 years. His direct appeal challenged only the consecutive nature of his sentences, and the

appellate court affirmed. In 2025, Smith sought leave to file a delayed motion for new trial based principally on an alleged alibi and ineffective assistance of counsel. The trial court denied leave, and the Tenth District affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Smith, 2010-Ohio-5077, ¶¶ 1-6, 15 (10th Dist.)
- State v. Townsend, 2008-Ohio-6518, ¶ 8 (10th Dist.)
- Blakemore v. Blakemore, 5 Ohio St. 3d 217, 219 (1983)
- State v. Holzapfel, 2010-Ohio-2856, ¶ 20 (10th Dist.)
- State v. Love, 2006-Ohio-6158, ¶ 43 (1st Dist.)
- State v. Gaven, 2017-Ohio-5524, ¶¶ 13-15 (10th Dist.)
- State v. Walden, 19 Ohio App.3d 141, 145-146 (10th Dist. 1984)
- State v. Bush, 2009-Ohio-441, ¶ 8
- State v. Oden, 1995 Ohio App. LEXIS 4149, *4 (9th Dist. Sept. 20, 1995)
- State v. Lei, 2006-Ohio-2608, ¶ 25 (10th Dist.)
- State v. Sevilla, 2023-Ohio-1726, ¶ 14 (10th Dist.)
- State v. Cashin, 2017-Ohio-9289, ¶ 17 (10th Dist.)
- State v. Moore, 2018-Ohio-318, ¶ 21 (2d Dist.)
- State v. Hatton, 2022-Ohio-3991, ¶ 30
- State v. Fox, 2009-Ohio-1327, ¶ 7 (10th Dist.)