

[Cite as *State v. Smith*, 2017-Ohio-8399.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104263

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

EDWARD A. SMITH

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-88-226041-A
Application for Reopening
Motion No. 508142

RELEASE DATE: November 1, 2017

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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MARY EILEEN KILBANE, P.J.:

{¶1} Edward A. Smith has filed an application for reopening pursuant to App.R. 26(B). Smith is attempting to reopen the delayed appeal rendered in *State v. Smith*, 8th Dist. Cuyahoga No. 104263, 2017-Ohio-1155, which affirmed the denial of a postsentence motion to withdraw his plea of guilty to the offense of aggravated murder. We decline to grant Smith’s application for reopening.

{¶2} App.R. 26(B) provides in part that “[a] defendant in a criminal case may apply for reopening of *the appeal from the judgment of conviction and sentence*, based on a claim of ineffective assistance of counsel.” (Emphasis added.) Herein, Smith is attempting to reopen the appellate judgment that affirmed the denial of his postsentence motion to withdraw his guilty plea for the offense of aggravated murder.

{¶3} An application for reopening, brought pursuant to App.R. 26(B), can only be employed to reopen an appeal taken from the underlying judgment of conviction and sentence imposed by the trial court, based upon a claim of ineffective assistance of appellate counsel. *State v. Loomer*, 76 Ohio St.3d 398, 1996-Ohio-59, 667 N.E.2d 1209. *See also State v. Pointer*, 8th Dist. Cuyahoga No. 85195, 2014-Ohio-2383; *State v. Bronczyk*, 8th Dist. Cuyahoga No. 98664, 2013-Ohio-3129; *State v. Nicholson*, 8th Dist. Cuyahoga No. 97873, 2013-Ohio-1786; and *State v. Townsend*, 8th Dist. Cuyahoga No. 97544, 2013-Ohio-1653. Because App.R. 26(B) applies only to the appeal of a criminal

conviction and sentence, it cannot now be employed to reopen the appeal that dealt with the denial of Smith's motion to withdraw his plea of guilty. *State v. Nelson*, 8th Dist. Cuyahoga No. 101228, 2015-Ohio-1734; *State v. Gaston*, 8th Dist. Cuyahoga No. 92242, 2009-Ohio-4715. *See also State v. Halliwell*, 8th Dist. Cuyahoga No. 70369, 1996 Ohio App. LEXIS 5750 (Dec. 30, 1996), *reopening disallowed*, motion No. 70369, 1999 Ohio App. LEXIS 285 (Jan. 28, 1999); *State v. Shurney*, 8th Dist. Cuyahoga No. 64670, 1994 Ohio App. LEXIS 896 (Mar. 10, 1994), *reopening disallowed*, motion No. 60758 (May 15, 1995).

{¶4} Accordingly, the application for reopening is denied.

MARY EILEEN KILBANE, PRESIDING JUDGE

TIM McCORMACK, J., and
MARY J. BOYLE, J., CONCUR