

[Cite as *State v. Willis*, 2018-Ohio-159.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101052

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LATESHA D. WILLIS

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-13-578384-A
Application for Reopening
Motion No. 512569

RELEASE DATE: January 17, 2018

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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EILEEN A. GALLAGHER, A.J.:

{¶1} On December 1, 2017, the applicant, Latesha Willis, pursuant to App.R. 26(B), applied to reopen this court's judgment in *State v. Willis*, 8th Dist. Cuyahoga No. 101052, 2014-Ohio-3729, in which this court affirmed her convictions and sentences for aggravated robbery with one- and three-year firearm specifications and possessing criminal tools.¹ Willis now claims that her appellate counsel was ineffective for not arguing (1) insufficient evidence focusing on the operability of the gun as compared to the use or brandishing of the gun, which counsel did argue, (2) manifest weight of the evidence again focusing on the operability of the gun as compared to the evidence of duress, which counsel did argue and (3) the propriety of the sentence. For the following reasons, this court denies the application to reopen.

{¶2} App.R. 26(B)(1) and (2)(b) require applications claiming ineffective assistance of appellate counsel to be filed within 90 days from journalization of the decision unless the applicant shows good cause for filing at a later time. The December 2017 application was filed approximately three years and three months after this court's decision on August 28, 2014. Thus, it is untimely on its face.

¹On September 18, 2014, Willis robbed the Dollar Bank in Richmond Heights, Ohio. She entered the bank 15 minutes before closing, gave the only teller a note to fill up a bag with money, and showed the teller a black gun in a bag she was carrying. The teller gave Willis \$3,924. Very shortly after that, the police arrested Willis for robbery. They recovered \$3,924, an unloaded handgun, and a loaded magazine. Willis claimed that two men forced her to commit the robbery. The trial judge sentenced her to three years on the firearm specification, six years for aggravated robbery, and 12 months concurrent for possessing criminal tools.

{¶3} The only good cause that Willis proffers is that she has shown that her appellate counsel was ineffective. She tenders no case law or other reasoning to support her position.

{¶4} The Supreme Court of Ohio in *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970, and *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, held that the 90-day deadline for filing must be strictly enforced. In *Gumm*, the Supreme Court of Ohio ruled that in promulgating the 90-day deadline, Ohio “erected a reasonable procedural requirement for triggering the right to an adjudication.” *Id.* at ¶ 8, quoting *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982). Furthermore, consistent enforcement of the rule protects the state’s legitimate interest in finality and ensures the prompt resolution of any claims of ineffective assistance of appellate counsel. In both cases, the court ruled that the applicants could not ignore the 90-day deadline, even if it meant retaining new counsel or filing the applications themselves. The court reaffirmed the principle that lack of effort, lack of imagination, and ignorance of the law do not establish good cause for failure to seek timely relief under App.R. 26(B).

{¶5} In *State v. Howard*, 8th Dist. Cuyahoga No. 97695, 2012-Ohio-3459, *reopening disallowed*, 2012-Ohio-3459, Howard argued that it would be unjust to deny an application to reopen an appeal due to a procedural defect when a genuine issue regarding the effectiveness of appellate counsel is shown. He cited several pre-*Gumm* and *Lamar* cases in support of his position. This court rejected the argument, because the Supreme

Court of Ohio made it very clear that an applicant must show extraordinary reasons for not timely filing. Claims of a “dead-bang winner” do not state good cause. So too in this case, Willis’ refocusing of the same arguments appellate counsel made and asserting that they show ineffective assistance of appellate counsel does not state good cause.

{¶6} Accordingly, this court denies the application to reopen.

EILEEN A. GALLAGHER, ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and
KATHLEEN ANN KEOUGH, J., CONCUR