

[Cite as *State v. Townsend*, 2018-Ohio-838.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 97544

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ALBERT J. TOWNSEND

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-09-531966
Application for Reopening
Motion No. 514520

RELEASE DATE: March 7, 2018

FOR APPELLANT

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MELODY J. STEWART, P.J.:

{¶1} Albert Townsend has filed an application for reopening pursuant to App.R. 26(B). Townsend is attempting to reopen the appellate judgment rendered in *State v. Townsend*, 8th Dist. Cuyahoga No. 97544, 2012-Ohio-3452, which affirmed the trial court's denial of a postconviction motion. For the following reasons, we decline to reopen Townsend's appeal.

{¶2} The appeal in *Townsend, supra*, concerned the trial court's denial of a postconviction motion. However, an application for reopening that is filed pursuant to App.R. 26(B) can only be employed to reopen an appeal from the judgment of conviction and sentence 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; *State v. Waver*, 8th Dist. Cuyahoga No. 97000, 2011-Ohio-6480. Since App.R. 26(B) applies only to the direct appeal of a criminal conviction

and sentence, it cannot be employed to reopen an appeal that dealt with the denial of a postconviction motion.

{¶3} It must also be noted that even if the present application for reopening was a first attempt to reopen this court's review of Townsend's conviction and sentence, the application was filed untimely. The opinion in *Townsend* was journalized on August 2, 2012. Townsend was required to file a timely application for reopening within 90 days of August 2, 2012, or establish good cause for its untimely filing. Townsend did not file this application for reopening until January 23, 2018, more than 90 days after journalization of the appellate judgment that he seeks to reopen and has failed to argue good cause for the untimely filing of his application for reopening. The failure to establish good cause for the untimely filing of the application for reopening requires that we decline to reopen Townsend's original appeal. *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861; *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970; *State v. Cooley*, 73 Ohio St.3d 411, 1995-Ohio-328, 653 N.E.2d 252.

{¶4} Accordingly, we deny the application for reopening.

MELODY J. STEWART, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
TIM McCORMACK, J., CONCUR