

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 105935
	:	
v.	:	
	:	
JUDITH O. NAGY,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: June 11, 2019

Cuyahoga County Court of Common Pleas
Case No. CR-17-614893-A
Application for Reopening
Motion No. 520180

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Daniel T. Van, Assistant Prosecuting Attorney, *for appellee*.

Judith O. Nagy, *pro se*.

SEAN C. GALLAGHER, J.:

{¶ 1} On August 13, 2018, the applicant, Judith Nagy, pursuant to App.R. 26(B) and *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992), pursuant to App.R. 26(B) applied to reopen this court's judgment in *State v. Nagy*, 8th Dist.

Cuyahoga No. 105935, 2018-Ohio-1513, in which this court affirmed her convictions and sentences, but reversed and remanded to modify the restitution order as to one of the victims.¹ Nagy now argues that her appellate counsel failed to argue that her trial counsel was ineffective, inter alia, for not investigating her case, for not using the materials she gave him for her defense, for not explaining the indictment and the plea deal, for not filing a promised sentencing memorandum, and for not defending her generally. She also argues that the trial court erred in not recording the pretrial conferences and not investigating the statements of prosecution witnesses. The state filed its brief in opposition, and Nagy filed her reply brief on September 4, 2018. For following reasons, this court denies the application.

{¶ 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 August 13, 2018 application was filed more than 110 days after this court's April 19, 2018 decision. Thus, it is untimely on its face. In an effort to establish good cause, Nagy argues that she was not able to obtain her court records and evidence in a timely manner and even then they were incomplete.

¹The grand jury indicted Nagy on 16 counts of aggravated theft, grand theft, theft, telecommunications fraud, passing bad checks, and money laundering. Pursuant to a plea agreement, Nagy pled guilty to one count of aggravated theft and one count of theft. The trial court sentenced her to 36 months on each count to be served consecutively, as well as \$5,000 restitution for one victim and \$15,000 for another victim. This court reversed and remanded on the \$15,000 restitution order.

{¶ 3} However, this argument does not establish good cause for untimely filing an application to reopen. This court has repeatedly held that difficulty in obtaining the transcript does not constitute good cause. In *State v. Towns*, 8th Dist. Cuyahoga No. 71244, Ohio App. LEXIS 4709 (Oct. 23, 1997), *reopening disallowed*, 2000 Ohio App. LEXIS 2030 (May 4, 2000), the applicant endeavored to show good cause for untimely filing by arguing that his counsel was uncooperative and refused to send him any documents concerning the case. This court rejected that argument, ruling that “being a layman and experiencing delays in obtaining records related to one’s conviction are not sufficient bases for establishing good cause for untimely filing of an application for reopening.” (Slip Op. at 3.) *State v. Chandler*, 8th Dist. Cuyahoga No. 59764, 1992 Ohio App. LEXIS 975 (Mar. 5, 1992), *reopening disallowed*, 2001 Ohio App. LEXIS 3624 (Aug. 13, 2001) — counsel’s delay in sending applicant the transcript was not good cause. *State v. Lawson*, 8th Dist. Cuyahoga No. 84402, 2005-Ohio-880, *reopening disallowed*, 2006-Ohio-3839.

{¶ 4} Moreover, 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 those cases, the applicants argued that after the court of appeals decided their cases, their appellate lawyers continued to represent them, and their appellate lawyers could not be expected to raise their own incompetence. Although the Supreme Court agreed with this latter principle, it rejected the argument that continued representation provided good cause. 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 then 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). Thus, Nagy's failure to obtain the transcript, court records, and other evidence does not state good cause.

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

SEAN C. GALLAGHER, JUDGE

MARY J. BOYLE, P.J., and
ANITA LASTER MAYS, J., CONCUR