

[Cite as *State v. Johnson*, 2019-Ohio-525.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102047

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMES JOHNSON

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-14-585440-A
Application for Reopening
Motion No. 523929

RELEASE DATE: February 12, 2019

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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EILEEN A. GALLAGHER, J.:

{¶1} Applicant James Johnson, pursuant to App.R. 26(B), seeks to reopen his appeal in *State v. Johnson*, 8th Dist. Cuyahoga No. 102047, 2016-Ohio-2622. Johnson advances two proposed assignments of error arguing that appellate counsel was ineffective for failing to argue that trial counsel was ineffective and that his sentence is void. Johnson's application is denied because it is untimely without a sufficient showing of good cause for the later filing.

Facts and Procedural Background

{¶2} Johnson was convicted of one count of rape of a child under the age of ten and sentenced to a prison term of 25 years to life. He appealed that conviction to this court claiming that it was against the manifest weight of the evidence, the court erred in failing to provide him with two attorneys at trial, prosecutorial misconduct occurred at trial when the state commented on his post-arrest silence, and trial counsel was constitutionally ineffective. *Id.* at _ 1. This

court overruled Johnson's assigned errors and affirmed his conviction and sentence on April 21, 2016. *Id.* at _ 38.

{¶3} On December 18, 2018, Johnson filed the instant application for reopening. The state timely filed a brief in opposition, pointing out that the application is untimely without good cause and arguing the application fails on the merits.

Law and Analysis

I. Timeliness

{¶4} App.R. 26(B) provides a means of redress for claims that appointed appellate counsel provided ineffective assistance during an appeal. However, the rule has a strict deadline that must be rigorously enforced. App.R. 26(B)(2)(b); *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 7-8,10; *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970. App.R. 26(B)(1) provides that an application must be filed within 90 days of the date of journalization of the appellate decision. Applications filed outside that time must show good cause for the untimely filing. App.R. 26(B)(2)(b).

{¶5} Approximately 971 days elapsed between the journalization of the appellate decision and the filing of the instant application. Therefore, Johnson is required to establish good cause for the untimely application before this court addresses the merits.

{¶6} In an effort to establish good cause, Johnson first argues that he was denied access to a transcript of proceedings that was required for him to file his application.

{¶7} This court has rejected similar arguments. *State v. Gaston*, 8th Dist. Cuyahoga No. 79626, 2007-Ohio-155, _ 8, citing *State v. Houston*, 73 Ohio St.3d 346, 1995-Ohio-317, 652 N.E.2d 1018. In *Gaston*, we held that lack of access to legal materials, transcripts or similar

materials did not constitute good cause for untimely filing. *Id.* Similar to *Houston*, Johnson argues that a transcript was required in order to file his application. *Houston* at 346. Also similar to *Houston*, part of Johnson's claim is that trial counsel failed to call certain witnesses or obtain certain evidence. *Id.* The *Houston* court found these assertions did not rely on a trial transcript in order to be advanced in an application for reopening. *Id.* The same is true here for many of the issues raised in Johnson's proposed assignment of error. Therefore, Johnson's lack of access to transcripts is not grounds for untimely filing.

{¶8} Next, Johnson asserts that his sentence is void and this should excuse the untimely filing of his application. Whether Johnson's sentence is void does not impact his ability to timely file an application for reopening. Johnson filed a direct appeal, this court heard and determined the matter and Johnson filed an application for reopening from that determination. An alleged sentencing error does not impact Johnson's ability to timely file an application for reopening.

{¶9} Johnson's application for reopening is untimely without a showing of good cause. This is sufficient grounds to deny the application. *State v. Lawson*, 8th Dist. Cuyahoga No. 84402, 2006-Ohio-3839, _ 5, 8, citing *Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861; *LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970.

{¶10} Application denied.

EILEEN A. GALLAGHER, JUDGE

LARRY A. JONES, SR., J., and
MARY J. BOYLE, J., CONCUR

