

[Cite as *State v. Vines*, 2019-Ohio-781.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 55693

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CEASAR VINES

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-87-218480
Application for Reopening
Motion No. 523930

RELEASE DATE: March 5, 2019

FOR APPELLANT

Ceasar W. Vines, pro se
Inmate No. 202311
Mansfield Correctional Institution
P.O. Box 788
Mansfield, Ohio 44901

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor
By: Gregory J. O'chocki
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MARY EILEEN KILBANE, A.J.:

{¶1} Caesar Vines has filed an application for reopening pursuant to App.R. 26(B). Vines is attempting to reopen the appellate judgment rendered in *State v. Vines*, 8th Dist. Cuyahoga No. 55693, 1989 Ohio App.LEXIS 3592 (Sept. 14, 1989), that affirmed his conviction and the sentence of incarceration imposed in *State v. Vines*, Cuyahoga C.P. No. CR-87-218480 for the offenses of kidnapping, gross sexual imposition, rape, and having weapons while under disability. We decline to reopen Vines's appeal.

{¶2} App.R. 26(B)(2)(b) requires that Vines establish "a showing of good cause for untimely filing if the application is filed more than 90 days after journalization of the appellate judgment" that is subject to reopening. The Supreme Court of Ohio, with regard to the 90-day deadline provided by App.R. 26(B)(2)(b), has established that

We now reject [the applicant's] claims that those excuses gave good cause to miss the 90-day deadline in App.R. 26(B). * * * Consistent enforcement of the rule's deadline by the appellate courts in Ohio protects on the one hand the state's legitimate interest in the finality of its judgments and ensures on the other hand that any claims of ineffective assistance of appellate counsel are promptly examined and resolved.

Ohio and other states “may erect reasonable procedural requirements for triggering the right to an adjudication,” *Logan v. Zimmerman Brush Co.* (1982), 455 U.S. 422, 437, 102 S.Ct. 1148, 71 L.Ed.2d 265, and that is what Ohio has done by creating a 90-day deadline for the filing of applications to reopen. * * * *The 90-day requirement in the rule is “applicable to all appellants,” State v. Winstead* (1996), 74 Ohio St.3d 277, 278, 658 N.E.2d 722, and [the applicant] offers no sound reason why he — unlike so many other Ohio criminal defendants — could not comply with that fundamental aspect of the rule.

(Emphasis added.) *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 7.

See also State v. Lamar, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970; *State v. Cooley*, 73 Ohio St.3d 411, 653 N.E.2d 252 (1995); *State v. Reddick*, 72 Ohio St.3d 88, 647 N.E.2d 784 (1995).

{¶3} Herein, Vines is attempting to reopen the appellate judgment that was journalized on September 14, 1989. The application for reopening was not filed until December 17, 2018, more than 28 years after journalization of the appellate judgment in *Vines, supra*. Thus, the application for reopening is untimely on its face.

{¶4} In an attempt to argue good cause for the untimely filing of the application for reopening, Vines argues that he was unable to timely obtain a copy of the transcript of his original trial. Specifically, Vines argues that:

I was denied due process of law as guaranteed by our Equal Protection Clause under the Fourteenth Amendment to the United States Constitution, and Article I, Section 16 of the Ohio Constitution because Cuyahoga County denied me the access to my trial transcripts. The arguments that I have brought forth in this Application to Re-Open my direct appeal could have not been litigated on appeal because my trial transcripts was presumably destroyed in a fire which occurred on December 27, 1988.

In 1988, in the exercise of due diligence, I wrote the Cuyahoga County Clerk of Courts to acquire a copy of my trial transcripts in Case No. 218480. Thereafter, the Clerk informed me that I had to contact their Official Court Reporter, Charles T. Birmelin, to purchase these records. On June 8, 1988, I was informed by the Clerk of Courts, that the transcripts had been destroyed in a fire which occurred in their office. Thereafter, I eventually obtained a copy of the transcripts from the Cuyahoga County Public Defender in August of 2000. The information contained within the transcripts is necessary to support the present claims in the attached document.

{¶5} This court has repeatedly held that difficulty in obtaining the transcript does not constitute good cause. *State v. Tomlinson*, 8th Dist. Cuyahoga No. 83411, 2005-Ohio-5844; *State v. Waller*, 8th Dist. Cuyahoga No. 87279, 2007-Ohio-6188. In *State v. Towns*, 8th Dist. Cuyahoga No. 71244, 1997 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.” *Id.* at ¶ 3. *State v. Bussey*, 8th Dist. Cuyahoga No. 75301, 1999 Ohio App. LEXIS 5707 (Dec. 2, 1999), *reopening disallowed*, 2000 Ohio App. LEXIS 3614 (Aug. 8, 2000); *Newburgh Hts. v. Chauncey*, 8th Dist. Cuyahoga No. 75465, 1999 Ohio App. LEXIS 3732 (Aug. 12, 1999), *reopening disallowed*, 2000 Ohio App. LEXIS 6261 (Oct. 20, 2000); *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 delays in sending applicant the transcript and refused access to parts of the transcript did not state good cause.

{¶6} In addition, the Supreme Court of Ohio has established that good cause cannot excuse the lack of timely filing for an indefinite period of time: “Even if we were to find good cause of earlier failures to file, any such good cause ‘has long evaporated. Good cause can excuse the lack of filing only while it exists, not for an indefinite period.’ *State v. Fox*, 83 Ohio St.3d 514, 516, 1998-Ohio-517,700 N.E.2d 1253, 1254.” *State v. Davis*, 86 Ohio St.3d 212, 214, 1999-Ohio-160, 714 N.E.2d 384.

{¶7} Finally, this is Vines’s second attempt to file an App.R. 26(B) application for reopening with regard to the original appellate judgment rendered by this court, on September 14, 1989, in *State v. Vines*, 8th Dist. Cuyahoga No. 55693. On June 5, 2003, this court denied Vines’s original App.R. 26(B) application for reopening that was filed on March 18, 2003 (Motion No. 347277). There exists no right to file successive applications for reopening under App.R. 26(B). *State v. Williams*, 99 Ohio St.3d 179, 2003-Ohio-3079, 790 N.E.2d 299; *State v. Twyford*, 106 Ohio St.3d 176, 2005-Ohio-4380, 833 N.E.2d 289; *State v. Saunders*, 8th Dist. Cuyahoga No. 96643, 2012-Ohio-4586. As a consequence, we must deny Vines’s second application for reopening.

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

MARY EILEEN KILBANE, ADMINISTRATIVE JUDGE

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

