

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 93158
 v. :
 :
 RYAN STURGILL, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: July 15, 2020

Cuyahoga County Court of Common Pleas
Case No. CR-507245
Application for Reopening
Motion No. 539100

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Callista Plemel, Assistant Prosecuting Attorney, *for appellee*.

Ryan Sturgill, *pro se*.

MICHELLE J. SHEEHAN, J.:

{¶ 1} Ryan Sturgill has filed an application for reopening pursuant to App.R. 26(B). Sturgill is attempting to reopen the appellate judgment rendered in *State v. Sturgill*, 8th Dist. Cuyahoga No. 93158, 2010-Ohio-2090, which affirmed

his conviction and the sentence of incarceration imposed in *State v. Sturgill*, Cuyahoga C.P. No. CR-08-507245-A for the offenses of aggravated theft (R.C. 2913.02(A)(1)) and receiving stolen property (R.C. 2913.51(A)). We decline to reopen Sturgill's appeal.

{¶ 2} App.R. 26(B)(2)(b) requires that Sturgill 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:

[W]e 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.

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, Sturgill is attempting to reopen the appellate judgment that was journalized on May 13, 2010. The application for reopening was not filed until June 4, 2020, more than 90 days after journalization of the appellate judgment in Sturgill, *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, Sturgill states that he was incompetent and unable to raise the issue of ineffective assistance of appellate counsel in a timely fashion. However, Sturgill does not demonstrate that he was incompetent and unable to timely file the application for reopening. A simple statement, that Sturgill was incompetent, does not establish good cause. *State v. Lawrence*, 8th Dist. Cuyahoga Nos. 100371 and 100387, 2019-Ohio-65, citing *State v. Woods*, 8th Dist. Cuyahoga No. 82789, 2014-Ohio-296, ¶ 4, citing *State v. McNeal*, 8th Dist. Cuyahoga No. 91507, 2009-Ohio-6453, ¶ 4. *See also State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 7; *LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970.

{¶ 5} Even if we were to accept the simple statement of incompetency as good cause, the Supreme Court of Ohio has established that good cause cannot excuse the lack of timely filing for an indefinite period of time.

Good cause can excuse the lack of a filing only while it exists, not for an indefinite period. *See State v. Hill* (1997), 78 Ohio St. 3d 174, 677 N.E.2d 337; *State v. Carter* (1994), 70 Ohio St. 3d 642, 640 N.E.2d 811. We specifically reject [applicant's] claim that "once an applicant has established good cause for filing more than ninety days after journalization * * *, it does not matter when the application is filed."

State v. Fox, 83 Ohio St.3d 514, 700 N.E.2d 1253 (1998).

{¶ 6} Herein, the appellate judgment subject to reopening was journalized on May 13, 2010. More than ten years has passed since we rendered our appellate opinion. Thus, we find that the time for filing an application for reopening has long passed. *State v. Williams*, 8th Dist. Cuyahoga No. 106266, 2019-Ohio-4780; *State v. Churn*, 8th Dist. Cuyahoga No. 105782, 2019-Ohio-4780; *State v. Marshall*, 8th Dist. Cuyahoga No. 87334, 2019-Ohio-1114; *State v. Davis*, 86 Ohio St.3d 212, 214, 1999-Ohio-160, 714 N.E.2d 384.

{¶ 7} Finally, Sturgill has not supported the application with an affidavit averring the grounds for reopening. App.R. 26(B)(2)(d) requires a “sworn statement of the basis for the claim that appellate counsel’s representation was deficient * * * and the manner in which the deficiency prejudicially affected the outcome of the appeal * * * .” In *State v. Lechner*, 72 Ohio St.3d 374, 650 N.E.2d 449 (1995), the Ohio Supreme Court held that the sworn statement is mandatory and upheld the denial of an application because that sworn statement was missing. The failure to provide the required sworn statement is also a sufficient basis to deny the application.

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

MICHELLE J. SHEEHAN, JUDGE

LARRY A. JONES, SR., P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR