

[Cite as *State v. Copeland*, 2020-Ohio-97.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

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| STATE OF OHIO, | : | |
| | : | |
| Plaintiff-Appellee, | : | No. 106988 |
| | : | |
| v. | : | |
| | : | |
| JAMES COPELAND, | : | |
| | : | |
| Defendant-Appellant. | : | |

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: January 14, 2020

Cuyahoga County Court of Common Pleas
Case No. CR-17-617365-B
Application for Reopening
Motion No. 532739

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Frank Romeo Zeleznikar, Assistant Prosecuting Attorney, *for appellee*.

James Copeland, *pro se*.

MARY J. BOYLE, P.J.:

{¶ 1} James Copeland has filed an application for reopening pursuant to App.R. 26(B). Copeland is attempting to reopen the appellate judgment rendered

in *State v. Copeland*, 8th Dist. Cuyahoga No. 106988, 2019-Ohio-1370, which affirmed his conviction and the sentence of incarceration imposed in *State v. Copeland*, Cuyahoga C.P. No. CR-17-617365-B, for the offenses of felonious assault (R.C. 2903.11(A)(1)), discharge of a firearm on or near prohibited premises (R.C. 2923.162(A)(3)), and having weapons while under disability (R.C. 2923.13(A)(3)). We decline to reopen Copeland's appeal.

{¶ 2} App.R. 26(B)(2)(b) requires that Copeland 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 C unlike so many other Ohio criminal defendants C 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, Copeland is attempting to reopen the appellate judgment that was journalized on April 11, 2019. The application for reopening was not filed until October 11, 2019, more than 90 days after journalization of the appellate judgment in *Copeland*. 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, Copeland argues detrimental reliance upon retained counsel. Specifically, Copeland argues that his retained counsel failed to timely file an App.R. 26(B) application for reopening.

{¶ 5} Reliance upon appellate counsel does not establish good cause for the untimely filing of an application for reopening. *State v. White*, 8th Dist. Cuyahoga No. 101576, 2017-Ohio-7169; *State v. Huber*, 8th Dist. Cuyahoga No. 93923, 2011-Ohio-3240; *State v. Koreisl*, 8th Dist. Cuyahoga No. 90950, 2011-Ohio-6438; *State v. Hudson*, 8th Dist. Cuyahoga No. 91803, 2010-Ohio-2879. *See also State v. Nicholson*, 8th Dist. Cuyahoga No. 82825, 2004-Ohio-2394, *reopening disallowed*, 2006-Ohio-3020, (recognizing that ineffective assistance of appellate counsel is not a sufficient excuse to support an untimely filing for an application to reopen). Additionally, “lack of knowledge or ignorance of the time constraint, applicable to an application for reopening per App.R. 26(B), does not provide sufficient cause for untimely filing.” *Hudson* at ¶ 7, citing *State v. Klein*, 8th Dist. Cuyahoga No. 58389,

1991 Ohio App. LEXIS 1346 (Mar. 28, 1991), *reopening disallowed* (Mar. 15, 1994), motion No. 249260, *aff'd*, 69 Ohio St. 3d 1481, 634 N.E.2d 1027 (1994).

{¶ 6} Moreover, this court has denied applications for reopening even if they are filed only a day after the deadline. *See, e.g., State v. Kimbrough*, 8th Dist. Cuyahoga No. 97568, 2012-Ohio-4931; *State v. Gray*, 8th Dist. Cuyahoga No. 90981, 2009-Ohio-4360.

{¶ 7} Finally, the exhibit attached to Copeland's application for reopening, a copy of the retainer contract executed by Copeland's mother on his behalf, clearly provides that retained counsel was "to appear as counsel and in the matter of memorandum in support of jurisdiction application to the Ohio Supreme Court." No reference is made with regard to retained counsel filing an App.R. 26(B) application for reopening on behalf of Copeland.

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

MARY J. BOYLE, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
LARRY A. JONES, SR., J., CONCUR