

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-06-1003

Appellee

Trial Court No. CR-0200502529-000

v.

Jeremy J. Quinn, Jr.

DECISION AND JUDGMENT

Appellant

Decided: July 28, 2011

* * * * *

Jeremy J. Quinn, Jr., pro se.

* * * * *

HANDWORK, J.

{¶ 1} This matter is before the court upon the pro se application for delayed reopening filed by defendant-appellant, Jeremy J. Quinn, Jr., on May 27, 2011, pursuant to App.R. 26(B). Quinn was convicted by a Lucas County jury of one count of kidnapping and six counts of rape. The trial court sentenced him to ten years on each count, to be served consecutively, for a total period of incarceration of 70 years. This court affirmed that judgment on February 29, 2008, in *State v. Quinn*, 6th Dist. No. L-06-1003, 2008-Ohio-819. Quinn did not appeal to the Supreme Court of Ohio.

{¶ 2} This is Quinn's second application for a delayed reopening of his appeal. His first application was filed on June 18, 2008. We denied that application on July 17, 2008, finding that Quinn's inability to obtain legal counsel and his limited access to a law library did not constitute good cause for the untimely filing of his application. In his present application, Quinn asserts new assignments of error relating to the issue of juror bias and argues that his inability to secure a copy of the trial transcript from his original appellate counsel is good cause for late filing. Quinn relates that he just recently received a complete copy of the transcript in conjunction with his pursuit of federal habeas corpus relief, specifically in the course of his appeal from the United States District Court's judgment denying the writ in *Quinn v. Ohio Dept. of Rehab. & Corr.* (Apr. 7, 2010), N.D.Ohio No. 3:09 CV 546.

{¶ 3} App.R. 26(B)(1) and (2)(b) require applications for reopening to be filed within 90 days from journalization of the appellate judgment unless the applicant shows good cause for untimely filing. An applicant's failure to demonstrate good cause is a sufficient basis for denying the application for reopening. See *State v. Quinn* (July 17, 2008), 6th Dist. No. L-06-1003, ¶ 4.

{¶ 4} Courts considering the issue have overwhelmingly held or recognized that a defendant's inability to obtain or access transcripts is generally insufficient to establish good cause for late filing under App.R. 26(B). *State v. Barnes*, 8th Dist. No. 94025, 2011-Ohio-1916, ¶ 4; *Rogers v. Warren Corr. Inst.* (Feb. 11, 2011), S.D.Ohio No.

1:10-cv-397; *State v. Allen*, 8th Dist. No. 92482, 2011-Ohio-588, ¶ 3; *State v. Day*, 8th Dist. No. 83138, 2010-Ohio-3862, ¶ 5-6; *Grant v. Hudson* (Nov. 23, 2010), N.D. Ohio No. 1:08CV0815; *State v. Dial*, 8th Dist. No. 83847, 2007-Ohio-2781, ¶ 6; *Parker v. Bagley* (Sept. 6, 2006), N.D. Ohio No. 1:01CV1672; *State v. Lawson*, 8th Dist. No. 84402, 2006-Ohio-3839, ¶ 6; *State v. Tomlinson*, 8th Dist. No. 83411, 2005-Ohio-5844, ¶ 2-3; *State v. Marcum* (Jan. 14, 2002), 12th Dist. No. CA96-03-049; *Abreu v. Huffman* (C.A.6, 2001), 27 Fed.Appx. 500, 505; *State v. Sweeney* (1999), 131 Ohio App.3d 765, 657; *State v. Simms* (Aug. 13, 1998), 8th Dist. No. 69314.

{¶ 5} We can discern no cogent reason for departing from the general rule in this case. Quinn does not claim that he was absent from his trial when the alleged errors were committed. While Quinn's lack of access to the transcript may have impeded his ability to articulate the alleged errors in precise detail, he could have raised the errors at least in a general manner. App.R. 26(B) does not require a defendant to support his or her application for reopening with references or citations to the record, and "[n]othing in the rule requires counsel to provide or make available a copy of the trial transcript for purposes of preparing an App.R. 26(B) application." *State v. Marcum*, supra. To the contrary, the rule contemplates that the transcript and other evidentiary materials may not be available to the defendant, thus requiring only that the application include "[a]ny parts of the record *available* to the applicant * * *." (Emphasis added.) App.R. 26(B)(2)(e).

{¶ 6} We find, therefore, that Quinn's inability to secure a copy of the trial transcript from his original appellate counsel does not constitute good cause for the

untimely filing of his present application for reopening. Moreover, there is no right to file a second or successive application for reopening under App.R. 26(B). *State v. Cooley*, 99 Ohio St.3d 345, 2003-Ohio-3914, ¶ 5; *State v. Williams*, 99 Ohio St.3d 179, 2003-Ohio-3079, ¶ 10; *State v. Cheren* (1995), 73 Ohio St.3d 137, 138; *State v. Peebles* (1995), 73 Ohio St.3d 149, 150. See, also, *State v. Davis*, 7th Dist. No. 05 MA 3, 2011-Ohio-2001, ¶ 6; *State v. Davis*, 7th Dist. No. 05 MA 3, 2008-Ohio-4515, ¶ 5; *State v. Slagle*, 8th Dist. No. 55759, 2002-Ohio-2722, ¶ 3; *State v. Towns*, 8th Dist. No. 71244, 2002-Ohio-2018, ¶ 3.

{¶ 7} Accordingly, Quinn's application to reopen his appeal is denied. In light of this disposition, and because the clerk of the court of appeals served the present application upon the prosecution on June 2, 2011, Quinn's accompanying motion to waive the requirement of furnishing copies of his application to the clerk is moot and, therefore, not well-taken.

APPLICATION DENIED.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
