

[Cite as *State v. Barnette*, 2015-Ohio-1280.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,)	
)	CASE NO. 11 MA 196
PLAINTIFF-APPELLEE,)	
)	
- VS -)	OPINION
)	AND
LORENZA BARNETTE,)	JUDGMENT ENTRY
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS: Application for Reopening.

JUDGMENT: Application Denied.

APPEARANCES:

For Plaintiff-Appellee:

Attorney Paul J. Gains
Prosecuting Attorney
Attorney Ralph M. Rivera
Asst. Prosecuting Attorney
21 W. Boardman Street
Youngstown, OH 44503

For Defendant-Appellant:

Lorenza Barnette, Pro-se
#A620-463
Ross Correctional Institution
P.O. Box 7010
Chillicothe, OH 45601

JUDGES:

Hon. Mary DeGenaro
Hon. Gene Donofrio
Hon. Carol Ann Robb

Dated: March 31, 2015

PER CURIAM.

{¶1} On March 20, 2015, Defendant, Lorenza Barnette, filed an application for reopening pursuant to App. R. 26(B). He is attempting to reopen the appellate judgment that was rendered by this Court in *State v. Barnette*, 7th Dist. No. 11 MA 196, 2014-Ohio-5673, where we affirmed his convictions for multiple offenses and a sentence of life imprisonment. For the following reasons, we decline to reopen Barnette's appeal.

{¶2} App.R. 26(B)(1) states:

A defendant in a criminal case may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel. An application for reopening shall be filed in the court of appeals where the appeal was decided within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time.

{¶3} As mandated by App.R. 26, an application for reopening must be filed within ninety days of journalization of the appellate judgment which the applicant seeks to reopen. The applicant must establish "good cause" if the application for reopening is filed more than ninety days after journalization of the appellate judgment. *State v. Cooley*, 73 Ohio St.3d 411, 1995-Ohio-328, 653 N.E.2d 252. "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." *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 7.

{¶4} This court journalized its judgment entry and opinion in Barnette's direct appeal on December 18, 2014. Barnette filed his application on March 20, 2015, making the application two days late, however, Barnette did not acknowledge this nor provide an explanation of good cause. Three days later, in what he incorrectly captioned as a motion in limine, Barnette acknowledged that his application was filed past the deadline and

essentially requested this court to grant him leave to file the application instanter.¹

{¶5} As his application was not filed within the 90-day period set forth in App.R. 26(B)(1) Barnette must make a showing of good cause for the untimely filing, which he failed to do. As such, Barnette's application must be denied. Barnette further failed to comply with App.R. 26(B)(2)(d) which states that an application for reopening must contain:

A sworn statement of the basis for the claim that appellate counsel's representation was deficient with respect to the assignments of error or arguments raised pursuant to division (B)(2)(C) of this rule and the manner in which the deficiency prejudicially affected the outcome of the appeal, which may include citations to applicable authorities and reference to the record.

{¶6} Barnette's application for reopening does not include a sworn statement. "The absence of a sworn statement in the form of an affidavit is fatally defective." *State v. Waller*, 8th Dist. No. 87279, 2007-Ohio-6188, ¶ 9 (internal citations omitted). As Barnette did not establish good cause for the delay in filing the application for reopening, nor attach a sworn statement as required by App.R. 26, his application for reopening is denied.

DeGenaro, J., concurs.

Donofrio, P.J., concurs.

Robb, J., concurs.

¹ It should be noted that in the March 23, 2015 "motion in limine", Barnette states that he filed the application late because of "mail procedures" at the correctional institution and because he had limited hours in the institution's library. It is well-established authority that "limited access to legal materials or a library does not constitute good cause for the late filing of an application for reopening." *State v. Norman*, 8th Dist. No. 80702, 2004-Ohio-226, ¶ 6.