

[Cite as *State v. Waver*, 2011-Ohio-6480.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 97000

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMES L. WAVER

DEFENDANT-APPELLANT

**JUDGMENT:
APPLICATION DENIED**

Cuyahoga County Court of Common Pleas
Case No. CR-351032
Application for Reopening
Motion No. 447644

RELEASE DATE: December 12, 2011

FOR APPELLANT

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KATHLEEN ANN KEOUGH, J.:

{¶ 1} James L. Waver has filed an application for reopening pursuant to App.R. 26(B). Waver is attempting to reopen the appellate judgment, as journalized in *State v. Waver* (July 21, 2011), Cuyahoga App. No. 97000, which dismissed the appeal that was initiated with regard to the denial of an “omnibus motion for appropriate relief/motion for new sentencing hearing” as filed in *State v. Waver*, Cuyahoga County Court of Common Pleas Case No. CR-351032. We decline to reopen Waver’s appeal.

{¶ 2} The appeal that formed the basis of Waver’s application for reopening concerned a post-conviction motion. Specifically, Waver’s appeal involved an appeal

from the denial of his motion for a new sentencing hearing. An application for reopening brought pursuant to App.R. 26(B) can only be employed to reopen an appeal from the judgment of conviction and sentence, based upon a claim of ineffective assistance of counsel. See *State v. Loomer*, 76 Ohio St.3d 398, 1996-Ohio-59, 667 N.E.2d 1209. See, also, *State v. Halliwell* (Dec. 30, 1996), Cuyahoga App. No. 70369, reopening disallowed (Jan. 28, 1999), Motion No. 300187; *State v. White* (Jan. 7, 2002), Cuyahoga App. No. 78190, reopening disallowed (May 13, 2004), Motion No. 357536; *State v. Shurney* (Mar. 10, 1994), Cuyahoga App. No. 64670, reopening disallowed (May 15, 1995), Motion No. 260758. Because App.R. 26(B) applies only to the direct appeal of a criminal conviction and sentence, it cannot be employed to reopen an appeal that dealt with a denial of a post-conviction motion.

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

KATHLEEN ANN KEOUGH, JUDGE

MARY J. BOYLE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR