

[Cite as *State v. Nicholson*, 2013-Ohio-1786.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 97873

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JOHNATHAN NICHOLSON

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-506069
Application for Reopening
Motion No. 461214

RELEASE DATE: April 26, 2013

FOR APPELLANT

Johnathan Nicholson, pro se
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ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor

By: Kristen L. Sobieski
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TIM McCORMACK, J.:

{¶1} Jonathan Nicholson has filed a timely application for reopening pursuant to App.R. 26(B). Nicholson is attempting to reopen the appellate judgment that was rendered in *State v. Nicholson*, 8th Dist. No. 97873, 2012-Ohio-4591, which affirmed the trial court's denial of a postconviction motion to withdraw his plea of guilty to four counts of aggravated murder, four counts of aggravated robbery, and one count of attempted aggravated robbery. We decline to reopen Nicholson's appeal.

{¶2} The appeal in *Nicholson* concerned the trial court's denial of a postconviction motion. However, an application for reopening, that is filed 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 appellate counsel. *State v. Loomer*, 76 Ohio St.3d 398, 1996-Ohio-59, 667 N.E.2d 1209; *State v. Waver*, 8th Dist. No. 97000, 2011-Ohio-6480. Since 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 the denial of a postconviction motion.

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

TIM McCORMACK, JUDGE

MARY J. BOYLE, P.J., and
KENNETH A. ROCCO, J., CONCUR