

[Cite as *State v. Pointer*, 2014-Ohio-2258.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 77294 and 85195

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DENNIS POINTER

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-93-294529
Application for Reopening
Motion Nos. 473636 and 473702

RELEASE DATE: May 28, 2014

FOR APPELLANT

Dennis W. Pointer
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EILEEN T. GALLAGHER, J.:

{¶1} Dennis Pointer has filed an application for reopening pursuant to App.R. 26(B). Pointer is attempting to reopen the appellate judgments, rendered by this court in *State v. Pointer*, 8th Dist. Cuyahoga No. 77294 (Dec. 17, 1999) and *State v. Pointer*, 8th Dist. Cuyahoga No. 85195, 2005-Ohio-3587. For the following reasons, Pointer's application for reopening is not well taken.

{¶2} Initially, we find that App.R. 26(B) is not applicable to the facts pertinent to the appeal in App. No. 77294. No appellate judgment, which reviewed Pointer's plea of guilty to the offenses of murder and sexual battery, has been announced and journalized by this court. This court denied Pointer's motion for a delayed appeal on December 17, 1999. Thus, we are prevented from considering Pointer's application for reopening. *State v. Skaggs*, 8th Dist. Cuyahoga No. 76301, 1999 Ohio App. LEXIS 4680 (Sept. 21, 1999). *See also State v. Loomer*, 76 Ohio St.3d 398, 667 N.E.2d 1209 (1996); *State v. Halliwell*, 8th Dist. Cuyahoga No. 70369, 1999 Ohio App. LEXIS 285 (Jan. 28, 1999); *State v. Fields*, 8th Dist. Cuyahoga No. 68906, 1997 Ohio App. LEXIS 4109 (Sept. 5, 1997); *State v. Williams*, 8th Dist. Cuyahoga No. 69936, 1996 Ohio App. LEXIS 4796 (Oct. 31, 1996).

{¶3} In addition, an application for reopening may be granted by this court only upon a showing that there exists a genuine issue as to whether the applicant was deprived of the effective assistance of appellate counsel on appeal. *See App.R. 26(B)(5)*. Since

no appellate counsel was involved in App. No. 85195, Pointer cannot establish a claim of ineffective assistance of appellate counsel. *State v. McCauley*, 8th Dist. Cuyahoga No. 81328, 2005-Ohio-6093. Pointer is also precluded from arguing his own ineffectiveness on appeal vis-a-vis his pro se representation. *State v. Boone*, 114 Ohio App.3d 275, 683 N.E.2d 67 (7th Dist. 1996); *State v. Henderson*, 8th Dist. Cuyahoga No. 95655, 2013-Ohio-2524; *State v. Jackson*, 8th Dist. Cuyahoga No. 80118, 2002-Ohio-5461.

{¶4} It must also be noted that an applicant is permitted to file only one application for reopening with regard to an appeal. Pointer has already filed an App.R. 26(B) application for reopening, with regard to App. No. 85195, on March 18, 2014. Neither App.R. 26(B) nor *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992), provides for second and subsequent applications for reopening. *State v. Cooley*, 99 Ohio St.3d 345, 2003-Ohio-3914, 792 N.E.2d 720; *State v. Williams*, 99 Ohio St.3d 179, 2003-Ohio-3079, 790 N.E.2d 299; *State v. Richardson*, 74 Ohio St.3d 235, 658 N.E.2d 273 (1996).

{¶5} Finally, App.R. 26(B)(2)(b) requires that Pointer establish a showing of good cause for untimely filing if the application for reopening is filed more than 90 days after journalization of the appellate judgment, which is subject to reopening. Herein, Pointer is attempting to reopen the appellate judgments journalized on December 17, 1999, and July 25, 2005. Pointer's application for reopening was not filed until April 1, 2014, more than 90 days after journalization of the appellate judgments in App. No. 77294 and App. No. 85195. Pointer has failed to establish good cause for the untimely filing of his

application for reopening. Thus, we are required to deny his application for reopening. *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861; *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970; *State v. Cooley*, *supra*.

{¶6} Application for reopening is denied.

EILEEN T. GALLAGHER, JUDGE

LARRY A. JONES, SR., P.J., and
MELODY J. STEWART, J., CONCUR