

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 85195

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DENNIS POINTER

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-294529
Application for Reopening
Motion No. 473259

RELEASED DATE: June 3, 2014

FOR APPELLANT

Dennis W. Pointer, pro se
Inmate No. 0169-139
P.O. Box 5600
Cleveland, Ohio 44101

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

By: Diane Smilanick
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, P.J.:

{¶1} Dennis Pointer has filed an application for reopening pursuant to App.R. 26(B). Pointer is attempting to reopen the appellate judgment, journalized in *State v. Pointer*, 8th Dist. Cuyahoga No. 85195, 2005-Ohio-3587, which affirmed the denial of a motion to withdraw a plea of guilty filed in *State v. Pointer*, Cuyahoga C.P. No. CR-351032. We decline to reopen Pointer's appeal.

{¶2} The appeal, which formed the basis of Pointer's application for reopening, concerned a postconviction motion. Specifically, Pointer's appeal involved an appeal from the denial of his motion to withdraw his plea of guilty. 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, 667 N.E.2d 1209 (1996). *See also State v. Bronczyk*, 8th Dist. Cuyahoga No. 98664, 2013-Ohio-3129; *State v. Nicholson*, 8th Dist. Cuyahoga No. 97873, 2013-Ohio-1786; and *State v. Townsend*, 8th Dist. Cuyahoga No. 97544, 2013-Ohio-1653. Because App.R. 26(B) applies only to the direct appeal of a criminal conviction and sentence, it cannot now be employed to reopen the appeal that dealt with a denial of a postconviction motion to withdraw a plea of guilty.

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

PATRICIA ANN BLACKMON, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
TIM McCORMACK, J., CONCUR