

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96032

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

WILLIE HURT

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-514257
Application for Reopening
Motion No. 474601

RELEASE DATE: June 18, 2014

FOR APPELLANT

Willie Hurt
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ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

By: Diane Smilanick
Assistant County Prosecutor
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KENNETH A. ROCCO, J.:

{¶1} On May 7, 2014, the applicant, Willie Hurt, pursuant to App.R. 26(B) and *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992), applied to reopen this court's judgment in *State v. Hurt*, 8th Dist. Cuyahoga No. 96032, Entry Nos. 439452 and 439502 (Nov. 22, 2010), in which this court denied Hurt's pro se November 17, 2010 motion for leave to file notice of appeal out of rule.¹ Hurt alleges that his appellate counsel should have argued the invalidity of the indictment and ineffective assistance of trial counsel. For the following reasons, this court denies the application.

{¶2} App.R. 26(B)(1) and (2)(b) require applications claiming ineffective assistance of appellate counsel to be filed within 90 days from journalization of the decision unless the applicant shows good cause for filing at a later time. Hurt filed the instant application approximately three-and-a-half years after this court's denial of this motion for a delayed appeal. Thus, it is untimely on its face, and Hurt proffers no good cause for his untimely filing.

{¶3} Moreover, in *State v. Hurt*, 8th Dist. Cuyahoga No. 96032, 2012-Ohio-4268, Hurt previously filed an App.R. 26(B) application to reopen. This court denied the application as untimely. It also ruled that because Hurt had represented himself in filing the motion for delayed appeal, he could not maintain a claim for ineffective assistance of appellate counsel. Again, Hurt, pro se, has filed an untimely application, which is

¹ In *State v. Hurt*, Cuyahoga C.P. No. CR-514257, Hurt pleaded guilty to one count each of rape and gross sexual imposition. On March 19, 2009, the trial court sentenced him to 18 years imprisonment.

stillborn. Additionally, the Supreme Court of Ohio has ruled that App.R. 26(B) does not permit successive applications. *State v. Slagle*, 97 Ohio St.3d 332, 2002-Ohio-6612, 779 N.E.2d 1041.

{¶4} Accordingly, this court denies the application.

KENNETH A. ROCCO, JUDGE

PATRICIA ANN BLACKMON, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR