

[Cite as *State v. Freeman*, 2014-Ohio-5273.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION  
No. 100521

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**MAURICE FREEMAN**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
APPLICATION DENIED

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Cuyahoga County Court of Common Pleas  
Case No. CR-01-410924  
Application for Reopening  
Motion No. 477646

**RELEASE DATE:** November 25, 2014

**FOR APPELLANT**

Maurice Freeman, pro se  
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P.O. Box 8000  
Conneaut, Ohio 44030

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
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FRANK D. CELEBREZZE, JR., J.:

{¶1} Maurice Freeman has filed an application for reopening pursuant to App.R. 26(B). Freeman is attempting to reopen the appellate judgment, rendered in *State v. Freeman*, 8th Dist. Cuyahoga No. 100521, 2014-Ohio-1732, that reversed the imposition of three-years mandatory postrelease control, but remanded for the limited purpose of imposing discretionary postrelease control pursuant to R.C. 2967.28(C). We decline to reopen Freeman’s appeal.

{¶2} App.R. 26(B)(2)(b) requires that Freeman establish “a showing of good cause for untimely filing if the application is filed more than 90 days after journalization of the appellate judgment” that is subject to reopening. The Supreme Court of Ohio, with regard to the 90-day deadline provided by App.R. 26(B)(2)(b), has established that

[w]e now reject [the applicant’s] claims that those excuses gave good cause to miss the 90-day deadline in App.R. 26(B). \* \* \* Consistent enforcement of the rule’s deadline by the appellate courts in Ohio protects on the one hand the state’s legitimate interest in the finality of its judgments and ensures on the other hand that any claims of ineffective assistance of appellate counsel are promptly examined and resolved.

Ohio and other states “may erect reasonable procedural requirements for triggering the right to an adjudication,” *Logan v. Zimmerman Brush Co.* (1982), 455 U.S. 422, 437, 102 S.Ct. 1148, 71 L.Ed.2d 265, and that is what Ohio has done by creating a 90-day deadline for the filing of applications to reopen. \* \* \* *The 90-day requirement in the rule is “applicable to all appellants,” State v. Winstead* (1996), 74 Ohio St.3d 277, 278, 658 N.E.2d 722, and [the applicant] offers no sound reason why he — unlike so many other Ohio criminal defendants — could not comply with that fundamental aspect of the rule.

(Emphasis added.) *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 7.

*See also State v. Lamar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970; *State v. Cooley*, 73 Ohio St.3d 411, 653 N.E.2d 252 (1995); *State v. Reddick*, 72 Ohio St.3d 88, 647 N.E.2d 784 (1995).

{¶3} Herein, Freeman is attempting to reopen the appellate judgment that was journalized on April 24, 2014. The application for reopening was not filed until August 15, 2014, more than 90 days after journalization of the appellate judgment in *Freeman, supra*. In an attempt to establish good cause for the untimely filing of his application for reopening, Freeman argues that

[a]ppellant is late because he was transferred to another correctional facility on May 28, 2014. During the transfer several legal documents were lost and have not been recovered, and appellant has experienced difficulties in preparing this application because of the lost [sic] of these documents during his institutional transfer.

{¶4} Freeman has failed to establish a showing of good cause for the untimely filing of his application for reopening. A claim of lost or misplaced legal documents does not establish good cause for the untimely filing of an application for reopening. *State v. Qunnie*, 8th Dist. Cuyahoga No. 72580, 2000 Ohio App. LEXIS 6223 (Dec. 21, 2000). In addition, ready access to the prison library, limited access to legal material, prison riots, and prison lockdowns have been repeatedly rejected as good cause for the untimely filing of an App.R. 26(B) application for reopening. *State v. Kinder*, 8th Dist. Cuyahoga No. 94722, 2012-Ohio-1339. Also, counsel cannot be expected to argue their own ineffectiveness on appeal. *Lamar, supra*; *State v. Davis*, 86 Ohio St.3d 212, 714 N.E.2d 384 (1999). Finally, lack of legal training and ignorance of the law does not establish good cause for failure to seek timely relief pursuant to App.R. 26(B). *Reddick, supra*. See also *State v. Klein*, 8th Dist. Cuyahoga No. 58389, 1991 Ohio App. LEXIS 1346 (Mar. 28, 1991), *reopening disallowed*, (Mar. 15, 1994), Motion No. 249260, *aff'd*, 69 Ohio St.3d 1481, 634 N.E.2d 1027 (1994); *State v. Trammell*, 8th Dist. Cuyahoga No. 67834, 1995 Ohio App. LEXIS 2962 (July 13, 1995), *reopening disallowed*, (Apr. 22, 1996), Motion No. 270493; *State v. Travis*, 8th Dist. Cuyahoga No. 56825, 1990 Ohio App. LEXIS 1356 (Apr. 5, 1990), *reopening disallowed*, (Nov. 2, 1994), Motion No. 251073, *aff'd*, 72 Ohio St.3d 317,

649 N.E.2d 1226 (1995); *State v. Gaston*, 8th Dist. Cuyahoga No. 79626, 2007-Ohio-155; *State v. Torres*, 8th Dist. Cuyahoga No. 86530, 2007-Ohio-9.

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

FRANK D. CELEBREZZE, JUDGE

MARY J. BOYLE, A.J., and  
MARY EILEEN KILBANE, J., CONCUR