

[Cite as *State v. Nelson*, 2015-Ohio-1734.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101228

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CARL A. NELSON

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-86-212590-B
Application for Reopening
Motion No. 481063

RELEASE DATE: May 6, 2015

FOR APPELLANT

Carl A. Nelson, pro se
Inmate No. 199-605
Grafton Correctional Institution
2500 S. Avon Belden Road
Grafton, OH 44044

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Brett Hammond
Assistant County Prosecutor
1200 Ontario Street
Cleveland, OH 44113

FRANK D. CELEBREZZE, JR., A.J.:

{¶1} Carl A. Nelson has filed an application for reopening pursuant to App.R. 26(B). Nelson is attempting to reopen the appellate judgment, journalized in *State v. Nelson*, 8th Dist. Cuyahoga No. 101228, 2014-Ohio-5285, which affirmed his classification as a sexual predator pursuant to former R.C. 2950.09. We decline to reopen Nelson’s appeal.

{¶2} App.R. 26(B) provides in part that “[a] defendant in a criminal case may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of counsel.” Herein, Nelson is attempting to reopen an appellate judgment that affirmed the finding by the trial court that the applicant was a sexual predator.¹

{¶3} An application for reopening, brought pursuant to App.R. 26(B), can only be employed to reopen an appeal from the underlying judgment of conviction and sentence as imposed by the trial court, 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. See also *State v. Pointer*, 8th Dist. Cuyahoga No. 85195, 2014-Ohio-2383; *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 Nelson’s classification as a sexual predator.

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

¹It must also be noted that sexual predator classifications are civil and not criminal in nature. *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570; *State v. Prunchak*, 8th Dist. Cuyahoga No. 88572, 2007-Ohio-3272.

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and
MARY EILEEN KILBANE, J., CONCUR