

[Cite as *State v. Taylor*, 2015-Ohio-3135.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 98107

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ALI TAYLOR

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-553483
Application for Reopening
Motion No. 485174

RELEASE DATE: August 5, 2015

FOR APPELLANT

Ali Taylor, pro se
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ATTORNEYS FOR APPELLEE

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Cuyahoga County Prosecutor
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MARY J. BOYLE, J.:

{¶1} Ali Taylor has filed an application for reopening pursuant to App.R. 26(B). Taylor is attempting to reopen the appellate judgment rendered in *State v. Taylor*, 8th Dist. Cuyahoga No. 98107, 2012-Ohio-5421, that affirmed his conviction and sentence for the offenses of felonious assault and having weapons while under disability. We decline to reopen Taylor's appeal.

{¶2} App.R. 26(B)(2)(b) requires that Taylor 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, Taylor is attempting to reopen the appellate judgment that was journalized on November 21, 2012. The application for reopening was not filed until May 1, 2015, more than 90 days after journalization of the appellate judgment in *Taylor, supra*. In an attempt to establish good cause for the untimely filing of his application for reopening, Taylor argues that:

Appellant's direct appeal was denied on November 21, 2012 and therefore pursuant to Appellate Rule 26(B) he submits that he failed to file a timely application for reopening within 90 days, and states the reasons for good cause are because: Following the affirmance of Mr. Taylor's conviction from the Court of Appeals, Mr. Taylor's court appointed appellate counsel did not inform Mr. Taylor about any additional rights that were available to him, despite clear issues brought to his attention. Mr. Taylor was uninformed about the nuances and intricates of Ohio Appellate process. He was never told about the specific timing requirements either for seeking Discretionary review in the Ohio supreme court (45 days after affirmance of the court of appeals, or to petition for Post-conviction relief (within 180 days after the journalization of his sentence under R.C. 2953.21) and a re-open pursuant to 26(B) (expires 90 days after the affirmance of the Court of Appeals). Mr. Taylor learned about the specific timing requirements after his family sought new representation to pursue further relief, retaining private counsel

* * *

{¶4} Taylor has failed to establish a showing of good cause for the untimely filing of his application for reopening. 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. 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} In addition, limited access to the prison library and legal materials 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. Finally, reliance on one's attorney does not provide good cause for the untimely filing of an application for reopening. In *State v. Pruitt*, 8th Dist. Cuyahoga Nos. 86707 and 86986, 2012-Ohio-94, and *State v. Alt*, 8th Dist. Cuyahoga No. 96289, 2012-Ohio-2054, this court held that appellate counsel's failure to inform the defendant as to the availability of App.R. 26(B) did not establish good cause for filing an untimely application for reopening.

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

MARY J. BOYLE, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
EILEEN A. GALLAGHER, J., CONCUR