

[Cite as *State v. Bates*, 2015-Ohio-4176.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 97631, 97632, 97633, and 97634

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROBERT L. BATES

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case Nos. CR-539120, CR-539321, CR-539142 and CR-540937
Application for Reopening
Motion No. 487454

RELEASE DATE: October 2, 2015

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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Cuyahoga County Prosecutor
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SEAN C. GALLAGHER, J.:

{¶1} Robert Bates has filed an application for reopening pursuant to App.R. 26(B).

Bates is attempting to reopen the appellate judgment, rendered in *State v. Bates*, 8th Dist. Cuyahoga Nos. 97631, 97632, 97633, and 97634, 2012-Ohio-3949, that affirmed the pleas of guilty and the denial of the motion to withdraw guilty pleas entered in *State v. Bates*, Cuyahoga C.P. Nos. CR-10-539120, CR-10-539142, CR-10-539321, and CR-10-540937. We decline to reopen Bates's appeal.

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

We 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, at ¶ 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, 1995-Ohio-328, 653 N.E.2d 252; *State v. Reddick*, 72 Ohio St.3d 88, 1995-Ohio-248, 647 N.E.2d 784.

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, 1995-Ohio-328, 653 N.E.2d 252; *State v. Reddick*, 72 Ohio St.3d 88, 1995-Ohio-249, 647 N.E.2d 784.

{¶3} Herein, Bates is attempting to reopen the appellate judgment that was journalized on August 30, 2012. The application for reopening was not filed until July 1, 2015, more than 90 days after journalization of the appellate judgment in *State v. Bates*, *supra*. Bates, however, has failed to establish any good cause for the untimely filing of his application for reopening. *State v. Kinder*, 8th Dist. Cuyahoga No. 94722, 2012-Ohio-1339.

{¶4} It must also be noted that this court has long held that lack of legal counsel, when attempting to file an application for reopening, does not establish “good cause” for filing beyond the 90-day limitation. *State v. Hornack*, 8th Dist. Cuyahoga No. 81021, 2005-Ohio-5843. *See also State v. Lamar*, *supra*. Difficulty in conducting legal research or limited access to legal materials does not establish “good cause” for the

untimely filing of an application for reopening. *State v. Houston*, 73 Ohio St.3d 346, 1995-Ohio-317, 652 N.E.2d 1018; *State v. Lawson*, 8th Dist. Cuyahoga No. 84402, 2006-Ohio-3939. A lack of legal training, effort or imagination, and ignorance of the law does not establish “good cause” for failure to seek timely relief pursuant to App.R. 26(B). *State v. Farrow*, 115 Ohio St.3d 205, 2007-Ohio-4792, 874 N.E.2d 526, citing *State v. Winstead*, 74 Ohio St.3d 277, 1996-Ohio-52, 658 N.E.2d 722.

{¶5} In addition, App.R. 26(B)(2)(d) requires “a sworn statement of the basis for the claim that appellate counsel’s representation was deficient with respect to the assignments of error or agreements raised * * * and the manner in which the deficiency prejudicially affected the outcome of the appeal * * * .” The sworn statement is mandatory, and the failure to include such an affidavit mandates denial of the application. *State v. Lechner*, 72 Ohio St.3d 374, 1995-Ohio-25, 650 N.E.2d 449 and *State v. Franklin*, 72 Ohio St.3d 372, 1995-Ohio-8, 650 N.E.2d 447.

{¶6} Finally, a guilty plea is a complete admission of a defendant’s guilt. A counseled plea of guilty, that is voluntarily and knowingly given, removes the issue of factual guilt from the case. *State v. Siders*, 78 Ohio App.3d 699, 605 N.E.2d 1283 (11th Dist.1992). When a defendant enters a plea of guilty, all appealable errors that might have occurred at trial are waived unless the errors precluded the defendant from entering a knowing and voluntary plea. *State v. Barnett*, 73 Ohio App.3d 244, 596 N.E.2d 1101 (2d Dist.1991), citing *State v. Kelley*, 57 Ohio St.3d 127, 566 N.E.2d 658 (1991). A guilty plea waives the right to claim that a defendant was prejudiced by ineffective

counsel, except with regard to any defects that caused the plea to be less than knowing and voluntary. *Id.* at 249; *see also State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, 855 N.E.2d 48. Herein, this court has already determined on appeal that “[o]ur review of the plea transcript demonstrates that the trial court substantially complied with the mandates of Crim.R. 11 and that Bates entered a knowing, intelligent, and voluntary plea to the charges.” *Bates, supra*, at ¶ 6. Because this court has already determined that Bates’s plea of guilty was entered knowingly, intelligently, and voluntarily, any claimed errors raised by Bates are waived. *State v. Wells*, 8th Dist. Cuyahoga No. 100365, 2015-Ohio-297.

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

SEAN C. GALLAGHER, JUDGE

MARY J. BOYLE, P.J., and
EILEEN A. GALLAGHER, J., CONCUR