

[Cite as *State v. Cowan*, 2015-Ohio-672.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 100741

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CRAIG A. COWAN

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-11-550536-A
Application for Reopening
Motion No. 480408

BEFORE: Jones, P.J., Keough, J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: February 25, 2015

FOR APPELLANT

Craig A. Cowan, pro se
Inmate No. 622-034
Grafton Correctional Institution
2500 South Avon-Belden Road
Grafton, Ohio 44044

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

BY: Brett Hammond
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

LARRY A. JONES, SR., P.J.:

{¶1} Craig Cowan has filed an application for reopening pursuant to App.R. 26(B). Cowan is attempting to reopen the appellate judgment, rendered in *State v. Cowan*, 8th Dist. Cuyahoga No. 100741, 2014-Ohio-3593, which affirmed the sentence of incarceration imposed in *State v. Cowan*, Cuyahoga C.P. No. CR-11-550536, but remanded for resentencing solely as to the imposition of postrelease control requirements. We decline to reopen Cowan’s appeal.

{¶2} App.R. 26(B)(2)(b) requires that Cowan 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, 653 N.E.2d 252 (1995); *State v. Reddick*, 72 Ohio St.3d 88, 647 N.E.2d 784 (1995).

{¶3} Herein, Cowan is attempting to reopen the appellate judgment that was

journalized on August 21, 2014. The application for reopening was not filed until November 21, 2014, more than 90 days after journalization of the appellate judgment in *State v. Cowan*, *supra*.

{¶4} Cowan, 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. 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, 652 N.E.2d 1018 (1995); *State v. Lawson*, 8th Dist. Cuyahoga No. 84402, 2006-Ohio-3939. A lack of legal training, effort or imagination, and ignorance of the law do 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, 658 N.E.2d 722 (1996). Herein, Cowan has failed to establish “a showing of good cause” for the untimely filing of his application for reopening, as premised upon lack of legal counsel, lack of legal training, ignorance of the law, and limited access to legal materials.

{¶5} Finally, the basis for Cowan’s application for reopening is premised upon the argument that the offenses of having weapons while under disability, improperly handling firearms in a motor vehicle, and discharge of a firearm on or near a prohibited premises should have been merged by the trial court for sentencing. The issue of merger was previously addressed through a direct appeal wherein we held that “there was a separate animus for each offense; therefore, the offenses do not merge.” *State v. Cowan*, 8th Dist. Cuyahoga No. 97877,

2012-Ohio-5723, ¶ 37. Because the issue of merger was previously raised, considered, and found to lack merit, the doctrine of res judicata prevents its relitigation and no basis exists for reopening. *State v. Dehler*, 73 Ohio St.3d 307, 652 N.E.2d 987 (1995); *State v. Terrell*, 72 Ohio St.3d 307, 652 N.E.2d 987 (1995); *State v. Johnson*, 8th Dist. Cuyahoga No. 96064, 2012-Ohio-1827.

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

LARRY A. JONES, SR., PRESIDING JUDGE

KATHLEEN A. KEOUGH, J., and
EILEEN T. GALLAGHER, J., CONCUR