[Cite as *State v. Hedenberg*, 2016-Ohio-3318.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102112

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JONATHAN E. HEDENBERG

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case Nos. CR-12-569273-B and CR-13-575797-A
Application for Reopening
Motion Nos. 493677 and 493880

RELEASE DATE: June 3, 2016

FOR APPELLANT

Jonathan E. Hedenberg, pro se
Inmate No. A650-241
P.O. Box 1812
Marion, Ohio 43301

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Jeffrey Schnatter
Gregory J. Ochocki
Assistant County Prosecutors
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

ANITA LASTER MAYS, J.:

{¶1} Jonathan E. Hedenberg has filed an application for reopening pursuant to App.R. 26(B). Hedenberg is attempting to reopen the appellate judgment, rendered in *State v. Hedenberg*, 8th Dist. Cuyahoga No. 102112, 2015-Ohio-4673, that affirmed his plea of guilty to the offenses of rape (R.C. 2907.02(A)(1)), gross sexual imposition (R.C. 2907.05(A)(4)), and the denial of his motion to withdraw guilty plea entered in *State v. Hedenberg*, Cuyahoga C.P. Nos. CR-12-569273 and CR-13-575797. We decline to reopen Hedenberg's appeal.

{¶2} App.R. 26(B)(2)(b) requires that Hedenberg 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.

State v. Gumm, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 7, 8, 10. *See also State v. Lamar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970; *State v. Cooey*, 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, Hedenberg is attempting to reopen the appellate judgment that was journalized on November 12, 2015. The application for reopening was not filed until February 17, 2016, more than 90 days after journalization of the appellate judgment in *State v. Hedenberg*, *supra*. In an attempt to argue good cause for the untimely filing of the application for reopening, Hedenberg argues that:

> (1) the appellant had inadequate access to the law library, legal resources, and coping facilities;
>
> (2) the appellant was delayed from being able to review the necessary parts of the record in order to support his claims;
>
> (3) the appellant made an attempt to send the items "NEXT DAY" mail, but the institution did not facilitate the request.

{¶4} Hedenberg, 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. 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 Lamar*. 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 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.

{¶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, 650 N.E.2d 449 (1995), and *State v. Franklin*, 72 Ohio St.3d 372, 650 N.E.2d 447 (1995).

{¶6} Finally, a guilty plea is a complete admission of a defendant's guilt. A counseled plea of guilty, which 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.

{¶7} Herein, this court has already determined on appeal that:

> In this case, the trial court fully complied with its duty to inform Hedenberg of his constitutional rights. The record also compels the conclusion that the trial court substantially complied with the other duties imposed by Crim.R. 11(C)(2). When Hedenberg told the trial court that he was taking medication, the court wanted the specific names and the reason he required them. The court also specifically asked Hedenberg if the medications compromised his understanding of the proceedings. When Hedenberg attempted to hedge his answer, the trial judge noted that she, too, took medication for the same disease. After this, Hedenberg agreed that the medication did not affect his understanding. Under these circumstances, the trial court was not required to explore further the possible psychological effects of Hedenberg's medication for treatment of Lupus in order to determine that his guilty pleas were knowing, voluntary, and intelligent. *State v. Martin*, 8th Dist. Cuyahoga No. 66046, 1994 Ohio App. LEXIS 4569 (Oct. 6, 1994); *State v. McDowell*, 8th Dist. Cuyahoga No. 70799, 1997 Ohio App. LEXIS 113 (Jan. 16, 1997).
>
> Hedenberg must also show that there exists a prejudicial effect resulting from the trial judge accepting his guilty plea. The test for prejudice is "whether the plea would have otherwise been made." *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990). Because the trial judge explicitly and clearly explained Hedenberg's rights and the results of his guilty plea, we cannot conclude that he would not have pleaded guilty. There is no evidence in the record that the trial judge did not comply in any way with the standards set forth in Crim.R. 11. The appellant understood the nature of his guilty plea, and the trial court did not unlawfully sentence him.

Hedenberg at ¶ 15.

{¶8} Because this court has already determined that Hedenberg's plea of guilty was entered knowingly, intelligently, and voluntarily, any claimed errors raised by Hedenberg are waived. *State v. Wells*, 8th Dist. Cuyahoga No. 100365, 2015-Ohio-297.

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

ANITA LASTER MAYS, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and
TIM McCORMACK, J., CONCUR