

[Cite as *State v. Matthews*, 2016-Ohio-5617.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101275

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

KENNETH MATTHEWS

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-13-577754-A
Application for Reopening
Motion No. 496888

RELEASE DATE: August 30, 2016

FOR APPELLANT

Kenneth Matthews, pro se
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ATTORNEYS FOR APPELLEE

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Cuyahoga County Prosecutor
By: Scott C. Zarzycki
 Anthony Thomas Miranda
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MELODY J. STEWART, J.:

{¶1} Kenneth Matthews has filed an application for reopening pursuant to App.R. 26(B). Matthews is attempting to reopen the appellate judgment rendered in *State v. Matthews*, 8th Dist. Cuyahoga No. 101275, 2015-Ohio-176, that affirmed his conviction and sentence for the offenses of murder and felonious assault but vacated the order of restitution and remanded to the trial court to conduct a hearing on actual losses suffered. We decline to reopen Matthews's appeal.

{¶2} App.R. 26(B)(2)(b) requires that Matthews 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, Matthews is attempting to reopen the appellate judgment that was journalized on January 22, 2015. The application for reopening was not filed until June 1, 2016, more than 90 days after journalization of the appellate judgment in *Matthews, supra*. In an attempt to establish good cause for the untimely filing of his application for reopening, Matthews argues that he was not informed by appellate counsel of the 90-day deadline applicable to an App.R. 26(B) application for reopening and that it required an inordinate period of time to obtain a copy of his trial court transcript.

{¶4} Matthews has failed to establish a showing of good cause for the untimely filing of his application for reopening. 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.

{¶5} In addition, the inability of a defendant to obtain or access transcripts does not constitute good cause for late filing under App.R. 26(B). *State v. Barnes*, 8th Dist. Cuyahoga No. 94025, 2011-Ohio-1916; *State v. Allen*, 8th Dist. Cuyahoga No. 92482,

2011-Ohio-588; *State v. Day*, 8th Dist. Cuyahoga No. 83138, 2010-Ohio-3862; *State v. Dial*, 8th Dist. Cuyahoga No. 83847, 2007-Ohio-2781; *State v. Lawson*, 8th Dist. Cuyahoga No. 84402, 2006-Ohio-3839; *State v. Tomlinson*, 8th Dist. Cuyahoga No. 83411, 2005-Ohio-5844; *State v. Simms*, 8th Dist. Cuyahoga No. 69314, 1998 Ohio App. LEXIS 3848 (Aug. 13, 1998).

{¶6} Finally, 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.

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

MELODY J. STEWART, JUDGE

SEAN C. GALLAGHER, P.J., and
EILEEN T. GALLAGHER, J., CONCUR