

[Cite as *State v. Casada*, 2016-Ohio-7775.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103362

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LLOYD A. CASADA

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case Nos. CR-13-580252-A and CR-15-593718-A
Application for Reopening
Motion No. 499170

RELEASE DATE: November 16, 2015

FOR APPELLANT

Lloyd A. Casada, pro se
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ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Anthony T. Miranda
Assistant County Prosecutor
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MARY J. BOYLE, J.:

{¶1} Lloyd A. Casada has filed an App.R. 26(B) application for reopening. Casada is attempting to reopen the appellate judgment rendered in *State v. Casada*, 8th Dist. Cuyahoga No. 103362, 2016-Ohio-2633, which affirmed the trial court’s imposition of consecutive sentences of incarceration in *State v. Casada*, Cuyahoga C.P. Nos. CR-13-580252 and CR-15-593718. For the following reasons, we deny the application for reopening.

{¶2} App.R. 26(B)(1) requires that an application for reopening must be filed within 90 days after journalization of the appellate judgment. App.R. 26(B)(2)(b) requires that Casada 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} The appellate judgment subject to reopening was journalized on April 21, 2016. The application for reopening was not filed until August 16, 2016, more than 90 days after journalization of the appellate judgment subject to reopening. In an attempt to establish good cause for the untimely filing of his application for reopening, Casada argues that “[he] made requests to Appellate Counsel to notify him of the status of the appeal and that he be sent all of his appellate documents concerning his case. Counsel finally sent these documents on July 29, 2016, see attached Exhibit, Letter from Appellate Counsel.”

{¶4} It is well settled that “neither misplaced reliance on counsel nor lack of communication between counsel and appellant provides good cause for a late filing of his application for reopening.” *State v. Gray*, 8th Dist. Cuyahoga No. 92646, 2012-Ohio-3565, ¶ 3, citing *State v. Alt*, 8th Dist. Cuyahoga No. 96289, 2012-Ohio-2054, *State v. Austin*, 8th Dist. Cuyahoga No. 87169, 2012-Ohio-1338; *State v. Alexander*, 8th Dist. Cuyahoga No. 81529, 2004-Ohio-3861. An appellant’s delayed receipt of notice of the appellate decision subject to reopening does not constitute good cause for an untimely application. *Alt*, citing *State v. Mitchell*, 8th Dist. Cuyahoga No. 88977,

2007-Ohio-6190, *reopening disallowed*, 2009-Ohio-1874 (“The failure of appellate counsel to notify a defendant-appellant of the judgment of the court of appeals is not good cause for the untimely filing of an application for reopening.”); *see also State v. Henderson*, 8th Dist. Cuyahoga No. 95655, 2013-Ohio-2524, ¶ 2.

{¶5} Finally, it is proper to deny an application for reopening solely because it is untimely filed and without good cause for the delay. *Gumm; LaMar*. Casada’s failure to demonstrate good cause is sufficient basis for denying his application for reopening. *See, e.g., State v. Almashni*, 8th Dist. Cuyahoga No. 92237, 2010-Ohio-898, *reopening disallowed*, 2012-Ohio-349. Because the lack of good cause precludes our consideration of the untimely application, the substantive merits of the application cannot be addressed. *State ex rel. Wood v. McClelland*, 140 Ohio St.3d 331, 2014-Ohio-3969, 18 N.E.3d 423; *State v. Chappell*, 127 Ohio St.3d 376, 2010-Ohio-5991, 939 N.E.2d 1234 (reaffirming rule not to issue advisory opinions).

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

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
ANITA LASTER MAYS, J., CONCUR