

[Cite as *State v. Melton*, 2017-Ohio-2648.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION  
No. 102396

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**ROBERT MELTON**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
APPLICATION DENIED

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Cuyahoga County Court of Common Pleas  
Case No. CR-14-588073-A  
Application for Reopening  
Motion No. 504139

**RELEASE DATE:** May 2, 2017

**FOR APPELLANT**

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TIM McCORMACK, P.J.:

{¶1} Robert Melton has filed an application for reopening pursuant to App.R. 26(B). Melton is attempting to reopen the appellate judgment rendered in *State v. Melton*, 8th Dist. Cuyahoga No. 102396, 2016-Ohio-1219, which affirmed his conviction of disrupting public service and assault. For the following reasons, we deny Melton’s application to reopen his appeal.

{¶2} Melton seeks to reopen the appellate judgment that was journalized on March 24, 2016. His application for reopening, however, was not filed until February 1, 2017. This falls outside the time limits of App.R. 26(B)(1), which requires applications to be filed within 90 days after journalization of the appellate judgment. The only exception that would permit us to review an untimely application is if applicant establishes “good cause” for filing at a later time. *Id.*

{¶3} Melton acknowledges that his application is untimely but claims “good cause” on the grounds that the clerk’s office sent notice to his formerly appointed appellate counsel, who never forwarded journal entries issued by this court, including the court’s decision. Apart from this court consistently rejecting this argument as grounds for “good cause” for an untimely application, the record does not support Melton’s claim.<sup>1</sup> The record reflects that Melton represented himself pro se in the underlying

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<sup>1</sup>This court has consistently recognized that appellate counsel’s failure 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. *State v. Jarrells*, 8th Dist. Cuyahoga No. 99329, 2013-Ohio-3813,

appeal and that notice of the court’s decision was delivered to the address provided by Melton. He therefore has failed to establish “good cause” for the untimely filing of his application for reopening. Thus, we are required to deny his application. *See, e.g., State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, and *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970 (recognizing that the 90-day deadline for filing must be strictly enforced).

{¶4} Additionally, an application for reopening may be granted by this court only upon a showing that there exists a genuine issue as to whether the applicant was deprived effective assistance of appellate counsel on appeal. *See* App.R. 26(B)(5). Melton, however, represented himself in the appeal and therefore is precluded from arguing ineffective assistance of counsel. *State v. Pointer*, 8th Dist. Cuyahoga No. 85195, 2005-Ohio-3587, *reopening disallowed*, 2014-Ohio-2258, ¶ 3, citing *State v. Boone*, 114 Ohio App.3d 275, 683 N.E.2d 67 (7th Dist.1996); *State v. Henderson*, 8th Dist. Cuyahoga No. 95655, 2012-Ohio-1040, *reopening disallowed*, 2013-Ohio-2524. As the United States Supreme Court noted in *Faretta v. California*, 422 U.S. 806, 834, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), fn. 46, “a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of ‘effective assistance of counsel.’”

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*reopening disallowed*, 2014-Ohio-4564, ¶ 6 \_ 7 (listing several cases standing for this proposition); *see also State v. Henderson*, 8th Dist. Cuyahoga No. 95655, 2012-Ohio-1040, *reopening disallowed*, 2013-Ohio-2524, ¶ 2.

{¶5} Finally, Melton’s application for reopening is fatally flawed on two separate grounds: (1) failure to state an assignment of error as required under App.R. 26(B)(2)(c), and (2) failure to attach a sworn statement as required under App.R. 26(B)(2)(d). Either ground is a sufficient basis to deny the application for reopening. *See State v. Bartoe*, 8th Dist. Cuyahoga No. 95286, 2011-Ohio-2521, *reopening disallowed*, 2012-Ohio-154, ¶ 3 \_ 4, citing *State v. Fryerson*, 8th Dist. Cuyahoga No. 91960, 2009-Ohio-4227, *reopening disallowed*, 2010-Ohio-1852, ¶ 8, and *State v. Thomas*, 8th Dist. Cuyahoga No. 94042, 2010-Ohio-5237, *reopening disallowed*, 2011-Ohio-6070; *see also State v. Lechner*, 72 Ohio St.3d 374, 650 N.E.2d 449 (1995).

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

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TIM McCORMACK, PRESIDING JUDGE

MARY J. BOYLE, J., and  
PATRICIA ANN BLACKMON, J., CONCUR