

[Cite as *State v. Cedeno*, 2017-Ohio-458.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 102327 and 102328

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

NOEL CEDENO

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-13-580862-A
Application for Reopening
Motion No. 501090

RELEASE DATE: February 3, 2017

FOR APPELLANT

Noel Ceden, pro se
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ATTORNEYS FOR APPELLEE

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Cuyahoga County Prosecutor
By: Mary M. Dyczek
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KATHLEEN ANN KEOUGH, A.J.:

{¶1} Noel Cedenó has filed an application for reopening pursuant to App.R. 26(B). Cedenó seeks to reopen the appellate judgment rendered in *State v. Cedenó*, 8th Dist. Cuyahoga Nos. 102327 and 102328, 2015-Ohio-5412, that affirmed his convictions in two separate cases involving several sexual offenses, including rape of a child under the age of 13, with a sexual violent predator specification, and rape of a child under ten years old, with a sexual violent predator specification. The trial court sentenced Cedenó to two terms of mandatory life in prison without parole for the rapes, to be served consecutively. We decline to reopen Cedenó's appeal.

{¶2} App.R. 26(B)(2)(b) requires that Cedenó 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, 1996 Ohio

52, 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} Here, Cedeno is attempting to reopen the appellate judgment that was journalized on December 24, 2015. The application for reopening, however, was not filed until October 18, 2016, more than 90 days after journalization of the appellate judgment. Cedeno acknowledges that his application is untimely, but argues that his appellate counsel failed to comply with his request for records. Cedeno also suggests that his “late” filing is due in part to his inability to obtain a copy of the transcript. These reasons, however, are insufficient to establish “good cause” under Ohio law.

{¶4} It is well settled that “reliance upon appellate counsel does not establish good cause for untimely filing an application for reopening.” *State v. Huber*, 8th Dist. Cuyahoga No. 93923, 2011-Ohio-62, *reopening disallowed*, 2011-Ohio-3240, ¶ 6 (citing string of cases recognizing same principle). Indeed, this court has consistently recognized that “the failure of appellate counsel to communicate with applicant and provide him with necessary records do not provide a basis for finding that an applicant has good cause for the untimely filing of an application for reopening.” *State v.*

Morgan, 8th Dist. Cuyahoga No. 55341, 1989 Ohio App. LEXIS 928 (Mar. 16, 1989), *reopening disallowed*, 2007-Ohio-5532, ¶ 7; *see also State v. Alt*, 8th Dist. Cuyahoga No. 92689, 2011-Ohio-5393, *reopening disallowed*, 2012-Ohio-2054 (appellate counsel's failure to give applicant copies of the notice of appeal and briefs in the direct appeal is not good cause). Further, "difficulty in obtaining a transcript or limited access to legal materials does not establish good cause for the untimely filing of an application for reopening." *Huber* at ¶ 6, citing *State v. Houston*, 73 Ohio St.3d 346, 652 N.E.2d 1018 (1995); *State v. Lawson*, 8th Dist. Cuyahoga No. 84402, 2005-Ohio-880, *reopening disallowed* 2006-Ohio-3839.

{¶5} Accordingly, because Cedenó has failed to establish a showing of good cause for the untimely filing of his application for reopening, the application is denied.

KATHLEEN ANN KEOUGH,
ADMINISTRATIVE JUDGE
EILEEN T. GALLAGHER, J., and
MELODY J. STEWART, J., CONCUR
