

[Cite as *State v. Gurkovich*, 2017-Ohio-7061.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102558

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GEOFFREY P. GURKOVICH

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-14-581976-A
Application for Reopening
Motion No. 508020

RELEASE DATE: August 1, 2017

FOR APPELLANT

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MARY J. BOYLE, J.:

{¶1} On June 15, 2017, the applicant, Geoffrey Garkovich, pursuant to App.R. 26(B), applied to reopen this court’s judgment in *State v. Garkovich*, 8th Dist. Cuyahoga No. 102558, 2015-Ohio-4586, in which this court affirmed Garkovich’s convictions and sentences for two counts of felonious assault and one count of murder with a three-year firearm specification.¹ Garkovich now maintains that his appellate counsel was ineffective for not advising him of a postconviction relief petition under R.C. 2953.21 and its filing deadlines. For the following reasons, this court denies the application to reopen.

{¶2} App.R. 26(B)(1) and (2)(b) require applications claiming ineffective assistance of appellate counsel to be filed within 90 days from journalization of the decision unless the applicant shows good cause for filing at a later time. The June 2017 application was filed approximately 19 months after this court’s decision. Thus, it is untimely on its face. In an effort to establish good cause, Garkovich claims he is filing the application to exhaust state remedies so he may pursue a federal habeas corpus petition. The Supreme Court of Ohio in *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970, and *State v. Gumm*, 103 Ohio St.3d 162,

¹Garkovich in trying to intimidate an individual shot into a car, in which were an eight-year-old, a five-year-old, a baby, and their mother. Garkovich killed the five-year-old and wounded the mother by shooting her eye out. Garkovich pleaded guilty to the three charges. The trial court imposed 15 years to life for the murder consecutive to the three-year firearm specification and consecutive to four years on each of the felonious assault charges for a total of 26 years to life.

2004-Ohio-4755, 814 N.E.2d 861, held that the 90-day deadline for filing must be strictly enforced. Applicants may not ignore the 90-day deadline. Lack of effort, lack of imagination, and ignorance of the law do not establish good cause for failure to seek timely relief under App.R. 26(B). Clearing a procedural prerequisite for a federal filing does not explain, much less excuse, the delay of over a year. Thus, Gurkovich does not show good cause for his untimely filing.

{¶3} The court further notes that App.R. 26(B)(2)(c) requires that an application to reopen contain “[o]ne or more assignments of error or arguments in support of assignments of error that previously were not considered * * *.”

The failure to advise about another remedy outside of appeal is not an assignment of error. Thus, Gurkovich’s complaint falls outside the scope of App.R. 26(B).

{¶4} Accordingly, this court denies the application to reopen.

MARY J. BOYLE, JUDGE

MELODY J. STEWART, P.J., and
SEAN C. GALLAGHER, J., CONCUR