

[Cite as *State v. Battiste*, 2017-Ohio-83.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102299

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAYSON BATTISTE

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-13-579620-A
Application for Reopening
Motion No. 502415

RELEASE DATE: January 10, 2017

FOR APPELLANT

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EILEEN T. GALLAGHER, P.J.:

{¶1} Jason Battiste has filed a second App.R. 26(B) application for reopening of the appellate judgment that was rendered by this court in *State v. Battiste*, 8th Dist. Cuyahoga No. 102299, 2015-Ohio-3586.

{¶2} On September 30, 2016, this court denied Battiste's initial application for reopening on the basis of untimely filing. On December 2, 2016, Battiste filed a second App.R. 26(B) application for reopening.

{¶3} Once again, Battiste has failed to establish good cause for the untimely filing of his application for reopening, which was filed more than 90 days after journalization of the appellate judgment on September 3, 2015. In an attempt to establish good cause for the untimely filing of his second application for reopening, Battiste argues that:

Neither, the Appellate Court, nor Appellate Counsel on appeal informed the Appellant that he had a constitutional right to file for a reopening procedure of the direct appeal or the time frame in which to file said application App.R. 26(B). Because of these facts, the reopening of appeal was not perfected in a timely fashion within the 90-day period, so to present the application to this Court of Appeals.

{¶4} Battiste has failed to establish good cause for the untimely filing of his application for reopening. Reliance on one's attorney and the failure of appellate counsel to inform the defendant as to the availability of App.R. 26(B) do not establish good cause for filing an untimely application for reopening. *State v. Pruitt*, 8th Dist. Cuyahoga Nos. 86707 and 86986, 2012-Ohio-94; *State v. Alt*, 8th Dist. Cuyahoga No. 96289, 2012-Ohio-2054. In addition, this court possesses no duty or legal obligation to inform any appellant of the ability to file an App.R. 26(B) application for reopening, once

an appeal has been decided. It must also be noted that a lack of legal training, effort, or imagination, and ignorance of the law do not establish “good cause” for failure to seek timely relief pursuant to App.R. 26(B). *State v. Farrow*, 115 Ohio St.3d 205, 2007-Ohio-4792, 874 N.E.2d 526. Thus, we are required to deny the untimely filed application for reopening. *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861; *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).

{¶5} Of greater significance is the fact that Battiste is not permitted to file a second application for reopening. *State v. Twyford*, 106 Ohio St.3d 176, 2005-Ohio-4380, 833 N.E.2d 289. There exists no right to file successive applications for reopening under App.R. 26(B). *State v. Williams*, 99 Ohio St.3d 179, 2003- Ohio-3079, 790 N.E.2d 299. *See also State v. Cooley*, 99 Ohio St.3d 345, 2003-Ohio-3914, 792 N.E.2d 720; *State v. Richardson*, 74 Ohio St.3d 235, 658 N.E.2d 273 (1996); *State v. Cheren*, 73 Ohio St.3d 137, 138, 652 N.E.2d 707 (1995).

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

EILEEN T. GALLAGHER, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
PATRICIA ANN BLACKMON, J., CONCUR