

[Cite as *State v. Robinson*, 2017-Ohio-951.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 85207

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GREGORY ROBINSON

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-03-445084
Application for Reopening
Motion No. 500388

RELEASE DATE: March 8, 2017

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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TIM McCORMACK, J.:

{¶1} On September 26, 2016, nearly 11 years after this court decided his direct appeal, Gregory Robinson filed an application pursuant to App.R. 26(B) to reopen the appellate judgment in *State v. Robinson*, 8th Dist. Cuyahoga No. 85207, 2005-Ohio-5132 (“*Robinson I*”). We decline to reopen Robinson’s appeal.

{¶2} In his direct appeal, this court affirmed his convictions of rape with force of a victim less than 13 years old, gross sexual imposition, and compelling prostitution. This court, however, reversed and remanded for the trial court to amend its journal entries to find Robinson not guilty of the sexually violent predator and sexual motivation specifications. This court further recognized, sua sponte, that Robinson should have been sentenced to a life term and the issue of parole should have been addressed. Consequently, this court vacated Robinson’s sentence and remanded the case for resentencing. *Id.* at ¶ 27.

{¶3} App.R. 26(B)(2)(b) requires that Robinson 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

We 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, ¶ 7-8, 10. *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).

{¶4} Although Robinson filed his untimely application to reopen his direct appeal in *Robinson I*, the thrust of his application pertains to the alleged ineffective assistance of his appellate counsel following his resentencing. He raises no arguments related to the performance of his appellate counsel in *Robinson I*. Instead, he appears to want to reopen the appeal that was filed in 8th Dist. Cuyahoga No. 88473 (Sept. 18, 2006) (“*Robinson II*”) after the trial court resentenced him to life in prison without the eligibility of parole for 15 years on the rape count and two years as to each of the remaining counts to be served concurrently. This court, however, dismissed Robinson’s appeal in *Robinson II* because Robinson failed to timely file a notice of appeal pursuant to App.R. 4(A). *See Robinson II*, motion No. 388475. This court further denied Robinson’s

motion for leave to file a delayed appeal for failing to comply with App.R. 5(A). *See Robinson II*, motion No. 388992.

{¶5} Even if we considered Robinson’s application as a delayed application for reopening his appeal in *Robinson II*, he fails to offer any grounds to support a finding of “good cause” for his ten-year delay in filing his application. His application merely references the alleged ineffective assistance of counsel in perfecting his appeal as the grounds for his “good cause.” Reliance upon appellate counsel, however, does not establish good cause for untimely filing an application for reopening. *State v. Cedeno*, 8th Dist. Cuyahoga Nos. 102327 and 102328, 2015-Ohio-5412, *reopening disallowed*, 2017-Ohio-458, ¶ 4; *State v. Koreisl*, 8th Dist. Cuyahoga No. 90950, 2009-Ohio-1238, *reopening disallowed*, 2011-Ohio-6438, ¶ 7; *State v. Hudson*, 8th Dist. Cuyahoga No. 91803, 2009-Ohio-6454, *reopening disallowed*, 2010-Ohio-2879; *State v. Nicholson*, 8th Dist. Cuyahoga No. 82825, 2004-Ohio-2394, *reopening disallowed*, 2006-Ohio-3020, ¶ 3 (recognizing that ineffective assistance of appellate counsel is not a sufficient excuse to support an untimely filing for an application to reopen). Additionally, “lack of knowledge or ignorance of the time constraint, applicable to an application for reopening per App.R. 26(B), does not provide sufficient cause for untimely filing.” *Hudson* at ¶ 7, citing *State v. Klein*, 8th Dist. Cuyahoga No. 58389, 1991 Ohio App. LEXIS 1346 (Mar. 28, 1991), *reopening disallowed* (Mar. 15, 1994), motion No. 249260, *aff’d*, 69 Ohio St.3d 1481, 634 N.E.2d 1027 (1994).

{¶6} Moreover, this court has denied applications for reopening even if they are filed only a couple of days after the deadline. *See, e.g., State v. Kimbrough*, 8th Dist. Cuyahoga No. 97568, 2012-Ohio-2927, *reopening disallowed*, 2012-Ohio-4931; *State v. Gray*, 8th Dist. Cuyahoga No. 90981, 2009-Ohio-1782, *reopening disallowed*, 2009-Ohio-4360.

{¶7} Here, we find no basis to disregard Robinson's exceptional delay in filing his application for reopening. He fails to demonstrate good cause to accept his untimely filing under App.R. 26(B). As a consequence, Robinson has not met the standard for reopening.

{¶8} Application for reopening is denied.

TIM McCORMACK, JUDGE

KATHLEEN ANN KEOUGH, A.J., and
EILEEN A. GALLAGHER, J., CONCUR