

[Cite as *State v. Ayers*, 2018-Ohio-382.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105225

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ADRIAN AYERS

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-16-607500-A
Application for Reopening
Motion Nos. 512416 and 512417

RELEASE DATE: January 26, 2018

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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Cuyahoga County Prosecutor
By: Mary M. Frey
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MELODY J. STEWART, J.:

{¶1} Adrian Ayers has filed an application for reopening pursuant to App.R. 26(B). Ayers is attempting to reopen the appellate judgment rendered in *State v. Ayers*, 8th Dist. Cuyahoga No. 105225, 2017-Ohio-6890, that affirmed his conviction for 11 counts of money laundering, 10 counts of telecommunications fraud, theft, misuse of credit cards, and 3 counts of identity fraud. We decline to reopen Ayers’s appeal.

{¶2} App.R. 26(B)(2)(b) requires that Ayers 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, 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} Herein, Ayers is attempting to reopen the appellate judgment that was journalized on July 20, 2017. The application for reopening was not filed until November 27, 2017, more than 90 days after journalization of the appellate judgment in *Ayers, supra*. Ayers claims that: 1) he did not timely receive notice from appellate counsel that his appeal had been affirmed; 2) he is not schooled in the law; 3) he is acting without legal guidance of counsel; and 4) he has no access to any legal materials such as books, documents, law library, computer case law, or local rules. Ayers has failed to demonstrate any viable showing of good cause for the untimely filing of his application for reopening.

{¶4} The rationales raised by Ayers, in support of his good cause argument, do not establish a valid basis for the untimely filing of his App.R. 26(B) application for reopening. In *State v. Lamar*, 8th Dist. Cuyahoga No. 49551, 1985 Ohio App. LEXIS 7284 (Oct. 15, 1985), *reopening disallowed* (Nov. 15, 1995), Motion No. 63398, this court held that lack of communication with appellate counsel did not show good cause. Similarly, in *State v. White*, 8th Dist. Cuyahoga No. 57944, 1991 Ohio App. LEXIS 357 (Jan. 31, 1991), *reopening disallowed* (Oct. 19, 1994), Motion No. 49174, and *State v. Allen*, 8th Dist. Cuyahoga No. 65806, 1994 Ohio App. LEXIS 4956 (Nov. 3, 1994), *reopening disallowed* (July 8, 1996), Motion No. 67054, this court rejected reliance on counsel as showing good cause. Specifically, in *State v. Fortson*, 8th Dist. Cuyahoga No. 72229,

1998 Ohio App. LEXIS 6104 (Dec. 17, 1998), *reopening disallowed* (Jan. 23, 2001), Motion No. 18195, 2001 Ohio App. LEXIS 245, this court ruled that an attorney's delay in notification of an appellate decision does not state good cause. *See also State v. Moss*, 8th Dist. Cuyahoga Nos. 62318 and 62322, 1993 Ohio App. LEXIS 2491 (May 13, 1993), *reopening disallowed* (Jan. 16, 1997), Motion No. 75838; *State v. McClain*, 8th Dist. Cuyahoga No. 67785, 1995 Ohio App. LEXIS 3207 (Aug. 3, 1995), *reopening disallowed* (Apr. 15, 1997), Motion No. 76811; and *State v. Russell*, 8th Dist. Cuyahoga No. 69311, 1996 Ohio App. LEXIS 1879 (May 9, 1996), *reopening disallowed* (June 16, 1997), Motion No. 82351, 1997 Ohio App. LEXIS 2663.

{¶5} In addition, this court has consistently ruled that lack of knowledge or ignorance of the law does not provide sufficient cause for untimely filing. *State v. Klein*, 8th Dist. Cuyahoga No. 58389, 1991 Ohio App. LEXIS 1346 (Apr. 8, 1991), *reopening disallowed* (Mar. 15, 1994), Motion No. 49260, *aff'd*, 69 Ohio St. 3d 1481, 634 N.E.2d 1027 (1994); *State v. Trammell*, 8th Dist. Cuyahoga No. 67834, 1995 Ohio App. LEXIS 2962 (July 24, 1995), *reopening disallowed* (Apr. 22, 1996), Motion No. 70493; *State v. Cummings*, 8th Dist. Cuyahoga No. 69966, 1996 Ohio App. LEXIS 4565 (Oct. 17, 1996), *reopening disallowed* (Mar. 26, 1998), Motion No. 92134; and *State v. Young*, 8th Dist. Cuyahoga Nos. 66768 and 66769, 1994 Ohio App. LEXIS 4634 (Oct. 13, 1994), *reopening disallowed* (Dec. 5, 1995), Motion No. 66164.

{¶6} This court has also repeatedly rejected the claim that limited access to legal materials states good cause for untimely filing. Further, prison riots, lockdowns, and

other library limitations have been rejected as constituting good cause. *State v. Kaszas*, 8th Dist. Cuyahoga Nos. 72547 and 72547, 1998 Ohio App. LEXIS 4227 (Sept. 21, 1988), *reopening disallowed* (Aug. 14, 2000), Motion No. 16752, 2000 Ohio App. LEXIS 3755; *State v. Hickman*, 8th Dist. Cuyahoga No. 72341, 1998 Ohio App. LEXIS 1893 (Apr. 30, 1998), *reopening disallowed* (Dec. 13, 2000), Motion No. 20830; *State v. Turner*, 8th Dist. Cuyahoga No. 55960 (Nov. 16, 1989), *reopening disallowed* (Aug. 20, 2001), Motion No. 23221; and *State v. Stearns*, 8th Dist. Cuyahoga No. 76513, 2000 Ohio App. LEXIS 3161 (July 24, 2000), *reopening disallowed* (Feb. 14, 2002), Motion No. 27761, 2002 Ohio App. LEXIS 770.

{¶7} Accordingly, this App.R. 26(B) application for reopening is denied.

MELODY J. STEWART, JUDGE

EILEEN A. GALLAGHER, A.J., and
ANITA LASTER MAYS, J., CONCUR