

[Cite as *State v. McFarland*, 2024-Ohio-60.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 111390
 v. :
 :
 SHEILA A. MCFARLAND, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: January 5, 2024

Cuyahoga County Court of Common Pleas
Case No. CR-16-604052-B
Application for Reopening
Motion No. 569248

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Daniel T. Van, Assistant Prosecuting Attorney, *for appellee*.

Sheila A. McFarland, *pro se*.

EILEEN T. GALLAGHER, J.:

{¶ 1} Sheila McFarland (“McFarland”) has filed an application for reopening pursuant to App.R. 26(B). McFarland is attempting to reopen the appellate

judgment rendered in *State v. McFarland*, 8th Dist. Cuyahoga No. 111390, 2022-Ohio-4638, that affirmed the denial of her motion for leave to file a motion for new trial in *State v. McFarland*, Cuyahoga C.P. No. CR-16-604052-B. We decline to reopen McFarland’s appeal.

{¶ 2} App.R. 26(B)(2)(b) requires that McFarland 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, McFarland is attempting to reopen the appellate judgment that was journalized on December 22, 2022. The application for reopening was not filed until November 3, 2023, more than 90 days after journalization of the appellate judgment in *McFarland, supra*. McFarland has not presented any reasons to establish good cause for the untimely filing of her application for reopening. *State v. Black*, 8th Dist. Cuyahoga No. 108001, 2020-Ohio-3278; *State v. Campbell*, 8th Dist. Cuyahoga No. 105488, 2018-Ohio-3494; *State v. Harris*, 8th Dist. Cuyahoga No. 104329, 2018-Ohio-839.

{¶ 4} In addition, an application for reopening is governed by App.R. 26(B) that provides a criminal defendant with a limited means to assert a claim of ineffective assistance of counsel on direct appeal. *State v. Barnes*, 8th Dist. Cuyahoga Nos. 108857, 108858, and 109321, 2020-Ohio-4988. The rule only applies to appeals from “the judgment of conviction and sentence.” App.R. 26(B)(1). The present application seeks to reopen an appeal that affirmed the denial of a motion for leave to file a motion for new trial. McFarland’s postconviction collateral attack does not constitute an appeal of the conviction and sentence. *State v. Loomer*, 76 Ohio St.3d 398, 667 N.E.2d 1209 (1996); *State v. Melendez*, 8th Dist. Cuyahoga No. 109199, 2021-Ohio-840.

{¶ 5} Finally, we also note that McFarland has not supported her application with an affidavit averring grounds for reopening. App.R. 26(B)(2)(d) requires a “sworn statement of the basis for the claim that appellate counsel’s representation was deficient * * * and the manner in which the deficiency prejudicially affected the outcome of the appeal * * * .” The failure to provide the required sworn statement is also a sufficient basis to deny the application. In *State v. Lechner*, 72 Ohio St.3d 374, 650 N.E.2d 449 (1995), the Ohio Supreme Court ruled that the sworn statement is mandatory and upheld the denial of an application because that sworn statement was missing. *See also State v. Hutchinson*, 8th Dist. Cuyahoga No. 106755, 2019-Ohio-1764.

{¶ 6} Accordingly, we find that McFarland has failed to establish good cause for the untimely filing of her application for reopening and also find that the application for reopening is procedurally defective.

{¶ 7} Application denied.

EILEEN T. GALLAGHER, JUDGE

SEAN C. GALLAGHER, P.J., and
MARY EILEEN KILBANE, J., CONCUR