

[Cite as *State v. Cospers*, 2017-Ohio-7402.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104832

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DARNELL E. COSPER

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-15-600586-A
Application for Reopening
Motion No. 507240

RELEASE DATE: August 29, 2017

FOR APPELLANT

Darnell E. Cospers, pro se
Inmate No. A681-060
Lorain Correctional Institution
2075 South Avon Belden Road
Grafton, Ohio 44044

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor
By: Anthony Thomas Miranda
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

SEAN C. GALLAGHER, J.:

{¶1} In *State v. Cosper*, Cuyahoga C.P. No. CR-15-600586-A, applicant, Darnell Cosper, pled guilty to and was convicted of aggravated robbery with a three-year firearm specification, aggravated robbery with a one-year firearm specification, attempted safecracking, grand theft, and having weapons while under disability. On February 3, 2016, the trial court sentenced Cosper to a total of eight years in prison. Six months later, Cosper filed a delayed appeal pro se, which this court ultimately dismissed for failure to file a brief in *State v. Cosper*, 8th Dist. Cuyahoga No. 104832 (Oct. 25, 2016) (entry no. 501156). Cosper did not appeal the dismissal, but filed an untimely motion for reconsideration approximately one month later on the basis that he had filed a motion for the appointment of appellate counsel and was awaiting a ruling. On December 6, 2016, this court denied Cosper's motion for reconsideration.

{¶2} On May 18, 2017, Cosper filed an application under App.R. 26(B) for reopening of this court's judgment in *State v. Cosper*, 8th Dist. Cuyahoga No. 104832. The state of Ohio opposes the application on the following grounds: (1) Cosper cannot avail himself of App.R. 26(B) because he represented himself in the direct appeal; (2) the application is untimely; and (3) it is procedurally defective. We agree and deny the application.

{¶3} App.R. 26(B)(1) provides, in part: "A defendant in a criminal case may apply for reopening of the appeal from the judgment of conviction and sentence, based on a

claim of ineffective assistance of appellate counsel.” A defendant who represents himself or herself on direct appeal, however, may not maintain an application for reopening. *State v. Kennedy*, 8th Dist. Cuyahoga No. 99378, 2014-Ohio-201, ¶ 4; *State v. Effinger*, 8th Dist. Cuyahoga No. 93450, 2009-Ohio-5242, ¶ 4; and *State v. Gaston*, 8th Dist. Cuyahoga No. 92242, 2009-Ohio-3080, *reopening disallowed*, 2009-Ohio-4715. Because Cosper represented himself on appeal, he cannot satisfy the standard for reopening under App.R. 26(B)(1).

{¶4} Further, App.R. 26(B)(2)(b) requires that an application for reopening include “a showing of good cause for untimely filing if the application is filed more than ninety days after journalization of the appellate judgment.” Here, Cosper has filed an untimely application and fails to offer any reason for the delay. His failure to establish “good cause” for the untimely filing requires that this court deny his application. *State v. Melton*, 8th Dist. Cuyahoga No. 102396, 2016-Ohio-1219, *reopening disallowed*, 2017-Ohio-2648, ¶ 3, citing *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, and *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970 (recognizing that the 90-day deadline for filing must be strictly enforced).

{¶5} Finally, Cosper’s application is procedurally defective because he failed to attach a sworn statement as required under App.R. 26(B)(2)(d). The sworn statement is mandatory and the failure to include one warrants denial of the application. *State v. Lechner*, 72 Ohio St.3d 374, 650 N.E.2d 449 (1995); *see also State v. Bates*, 8th Dist. Cuyahoga Nos. 97631, 97632, 97633, and 97634, 2012-Ohio-3949, *reopening*

disallowed, 2015-Ohio-4176 (applying *Lechner* and recognizing that the sworn statement is mandatory).

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

SEAN C. GALLAGHER, JUDGE

EILEEN T. GALLAGHER, P.J., and
MELODY J. STEWART, J., CONCUR