

IN THE U.S. DIST COURT
SOUTHERN DIST OF OHIO

2006 MAY 26 P 3:36

IN RE: CASE NO: 2:05-cv-682
CASE NAME: NOLAND V. WARDEN ROSS CORRECTIONAL INSTITUTION

WHICH NEEDS TO BE NOW, NOLAND V. NOBLE CORRECTIONAL INSTITUTION.

REPORT AND RECOMMENDATION SATISFIED

ON MARCH 21, 2006 THIS FEDERAL DISTRICT COURT INSTRUCTED MYSELF AND RECOMMENDED THAT I GO BACK TO THE STATE LEVEL AND EXHAUST A REOPENING OF DIRECT APPEAL PURSUANT TO APP.R.26(B).

SO AS INSTRUCTED, I NOLAND, DENNIS HAVE SATISFIED THE RECOMMENDATION,

AS ENCLOSED AS FOLLOWS:

ON APRIL 20, 2006 I FILED A REOPENING OF DIRECT APPEAL
ON MAY 16, 2006 THE APPEALS COURT DENIED SUCH MOTION AS UNTIMELY

I AM NOW BEFORE THIS HONORABLE COURT OF THE U.S. DISTRICT COURT FOR THE RELIEF SOUGHT AND WISH TO PROCEED WITH MY HABEAS CORPUS OR OTHER AS THIS COURT DEEMS FIT.

RESPECTFULLY SUBMITTED

Skinner et al v. New York Times Company

Doc. 14

Dennis Noland
DENNIS NOLAND # 427-148
15708 McCONNELSVILLE RD.
CALDWEL OHIO 43724

PLEASE TAKE NOTE , I NO LONGER RESIDE AT ROSS CORRECTIONAL, I HAVE MOVED TO NOBLE CORRECTIONAL INSTITUTION.

RESPECTFULLY NOTED

Dennis Noland
DENNIS NOLAND

CERTIFICATE OF SERVICE

I HEREBY STATE A TRUE COPY OF THIS MOTION WAS SENT TO THE U.S. DISTRICT COURTS CLERK OF COURT ON THIS 23 DAY OF MAY 2006 BY U.S. MAIL.

BY: Dennis Noland

FILED
JAMES BONINI
CLERK

05 JUL 13 PM 1:17# 2

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District	Southern
Name (under which you were convicted): Dennis R. Noland		Docket Case No. 2:05 CV 682	
Place of Confinement: Ross Correctional Institution		Prisoner No.: A427-148	
Petitioner (include the name under which you were convicted): Dennis R. Noland		Respondent (authorized person having custody of petitioner): Pat Houley, Warden	
The Attorney General of the State of Ohio			

RECEIVED

PETITION

JUL 12 2005

JAMES BONINI, Clerk

1. (a) Name and location of court that entered the judgment of conviction you are challenging: Cincinnati, Ohio Court of Common Pleas, Washington County Ohio

(b) Criminal docket or case number (if you know): 00 CR 169

2. (a) Date of the judgment of conviction (if you know): _____

(b) Date of sentencing: April 26, 2002

3. Length of sentence: 10 Years

4. In this case, were you convicted on more than one count or of more than one crime? Yes No

5. Identify all crimes of which you were convicted and sentenced in this case: Rape

6. (a) What was your plea? (Check one)

- (1) Not guilty
- (2) Guilty
- (3) Nolo contendere (no contest)
- (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

Other Orders/Judgments

2:05-cv-00682-ALM-MRA Noland v. Warden Ross Correctional Institution

U.S. District Court

Southern District of Ohio

Notice of Electronic Filing

The following transaction was received from jr, entered on 3/21/2006 at 2:26 PM EST and filed on 3/21/2006

Case Name: Noland v. Warden Ross Correctional Institution

Case Number: 2:05-cv-682

Filer:

Document Number: 9

Docket Text:

REPORT AND RECOMMENDATIONS re [1] Petition for Writ of Habeas Corpus filed by Dennis Noland. The Magistrate Judge RECOMMENDS that claim two be DISMISSED, and that further proceedings in this action be STAYED so that petitioner may file a delayed 26(B) application in the state appellate court. The Magistrate Judge FURTHER RECOMMENDS that petitioner be directed to initiate state court action within 30 days, and notify federal court within 30 days of completion of state court remedies as to his claim of ineffective assistance of appellate counsel. Petitioner's motion to expand the record [7] is GRANTED. Objections to R&R due by 4/4/2006. Signed by Judge Mark R. Abel on 3/21/06. (jr)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1040326259 [Date=3/21/2006] [FileNumber=933234-0]
[0ef87f76bc28f4146d2c3b227c60d7ae2a61ede980e63cb3dde3a7a29173f6ce4714
aa12adb753218b251303c3bf2d33db8e7b1759f2bf15d9856e0071e8957d]]

2:05-cv-682 Notice will be electronically mailed to:

Jerri Lynne Fosnaught jfosnaught@ag.state.oh.us,

2:05-cv-682 Notice will be delivered by other means to:

Dennis Noland
A427-148
Ross Correctional Institution
6A
Box 7010
Chillicothe, OH 45601

FILED
CLERK OF COURTS

2006 APR 20 PM 4:03

IN THE COURT OF APPEALS OF
WASHINGTON COUNTY,
FOURTH DISTRICT OF OHIO

WASHINGTON CO. OHIO
FOURTH DISTRICT
COURT OF APPEALS

STATE OF OHIO,
APPELLEE,

COURT OF APPEALS CASE # 04 CA 9 and 02 CA 28

V.

TRIAL COURT CASE # 00 CR 169

DENNIS NOLAND
APPELLANT,

COMES NOW APPELLANT, DENNIS NOLAND, HEREIN AND PURSUANT TO OHIO
RULES OF APPELLATE PROCEDURE, APP.R.26(B) AND STATE V. MURNAHAN (1992), 63 OHIO
ST.3D 60, REQUESTS THE COURT TO REOPEN HIS ORIGINAL APPEAL, BECAUSE PREVIOUS
APPELLATE COUNSEL WAS INEFFECTIVE. AN OUTLINE OF THE GROUNDS FOR SUCH ERRORS
ARE SET FORTH IN THE ATTACHED MEMORANDUM IN SUPPORT.

RESPECTFULLY SUBMITTED,

Dennis Noland
15708 McCONNELSVILLE RD.
CALDWELL OHIO 43724

APPELLANT/DEFENDANT PRO SE.

CERTIFICATE OF SERVICE

I CERTIFY THAT A TRUE COPY WAS SENT TO THE WASHINGTON COUNTY PROSECUTOR ON
THE 17 DAY OF APRIL 2006. BY U.S. MAIL.

SUBMITTED,

Dennis Noland
APPELLANT PRO SE.

IN THE COURT OF APPEALS
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY
205 PUTNAM ST, COURTHOUSE
MARIETTA, OHIO 45750

#3 WRIT

OHIO V DENNIS NOLAND

To: DENNIS NOLAND
#427-148 NOBLE CORR INSTITUTE
15708 MCCONNELSVILLE RD
CALDWELL OH 43724

Pursuant to Appellate Rule 30A, you are hereby notified that an entry, copy hereto attached, in the above styled action was filed for journalization in this court on

05/16/06

CASE NO. 04CA 9 & 02CA 28

NOTICE OF FILING

RULE 30-A
Papers Attached:

Court Order dated:
05/16/06

JUDY R. VAN DYK
Clerk of Courts, BY

Original Notice to:

ATTY ALISON L CAUTHORN
DENNIS NOLAND

Deputy

Dated 05/17/06

FOURTH DISTRICT
COURT OF APPEALS
FILED

CLERK OF COURTS

2006 MAY 16 AM 11: 25

WASHINGTON CO. OHIO

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

State of Ohio,

Plaintiff-Appellee,

vs.

Dennis Noland,

Defendant-Appellant.

Case No. 04CA9 & 02CA28

ENTRY DENYING MOTION
TO REOPEN APPEAL

APPEARANCES:

Dennis Noland, pro se, Caldwell, Ohio, for appellant.

Kline, J.:

{¶1} Appellant, Dennis Noland, filed a motion to reopen his appeal pursuant to App.R. 26(B). We deny his motion because he (1) did not file it within ninety days of his appellate judgment and (2) does not show good cause for filing it at a later time. Accordingly, we deny appellant's motion to reopen.

I.

{¶2} The Washington County Common Pleas Court gave Noland the maximum sentence after he pled guilty to raping his mentally retarded stepdaughter. Further, the court classified Noland as a sexual predator. We affirmed in *State v. Noland* (Mar. 12, 2003), Washington App. No. 02CA28, 2003-Ohio-1386. The Ohio Supreme Court reversed and remanded for re-sentencing. *State v. Noland*, 99 Ohio St.3d 474, 2003-Ohio-4167. After the new sentencing

hearing, we affirmed on appeal. *State v. Noland* (Nov. 5, 2004), Washington App. No. 04CA9, 2004-Ohio-5944, appeal not allowed, *State v. Noland*, 105 Ohio St.3d 1470, 2005-Ohio-1186.

{13} Noland argues that his counsel was ineffective by failing to raise thirteen errors. However, Noland does not even mention, let alone argue, why he waited so long to file his motion to reopen.

{14} App.R. 26(B) provides, in part: "An application for reopening shall be filed * * * within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time." The rule further 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."

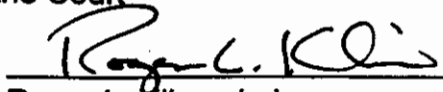
{15} This court's last decision affirming the trial court's judgment was journalized on Nov. 5, 2004. Noland's motion to reopen was filed on April 20, 2006, clearly in excess of the ninety-day limit.

{16} As stated earlier, Noland does not mention or argue "good cause" for the late filing. The Ohio Supreme Court has upheld judgments denying motions for reopening solely on the basis that the motion was not timely filed and the movant failed to show "good cause for filing at a later time." See, e.g., *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755; *State v. Lamar*, 102 Ohio St.3d 467, 2004-Ohio-3976. See, also, *State v. Collier*, Cuyahoga App. No. 51993, 2005-Ohio-5797; *State v. Garcia*, Cuyahoga App. No. 74427, 2005-Ohio-5796. Consequently, Noland has not met the standard for reopening.

{17} Accordingly, Noland's motion to reopen is DENIED.

Harsha, P.J. and Abele, J.: Concur.

For the Court

BY: 
Roger L. Kline, Judge