

[Cite as *State v. Durden*, 2015-Ohio-3235.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102322

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DELEON DURDEN

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-91-271159-A
Application for Reopening
Motion No. 484617

RELEASE DATE: August 12, 2015

FOR APPELLANT

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MARY J. BOYLE, J.:

{¶1} Deleon Durden has filed an application for reopening pursuant to App.R. 26(B). Durden is attempting to reopen the delayed appeal that was filed in *State v. Durden*, 8th Dist. Cuyahoga No. 102322.¹ On January 13, 2015, this court denied Durden’s motion for delayed appeal and dismissed the appeal. We decline to grant Durden’s application for reopening.

{¶2} App.R. 26(B) provides in part that “[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 counsel.” Herein, Durden is attempting to reopen an appellate judgment that denied his motion for a delayed appeal.

{¶3} An application for reopening, brought pursuant to App.R. 26(B), can only be employed to reopen an appeal from the underlying judgment of conviction and sentence as imposed by the trial court, based upon a claim of ineffective assistance of appellate counsel. *State v. Loomer*, 76 Ohio St.3d 398, 1996-Ohio-59, 667 N.E.2d 1209. *See also State v. Pointer*, 8th Dist. Cuyahoga No. 85195, 2014-Ohio-2383; *State v. Bronczyk*, 8th Dist. Cuyahoga No. 98664, 2013-Ohio-3129; *State v. Nicholson*, 8th Dist. Cuyahoga No. 97873, 2013-Ohio-1786; and *State v. Townsend*, 8th Dist. Cuyahoga No. 97544, 2013-Ohio-1653. Because App.R. 26(B) applies only to the direct appeal of a criminal

¹Durden attempted to appeal the judgment rendered in *State v. Durden*, Cuyahoga C.P. No. CR-91-271159-A, that denied his “motion to permit the defendant withdrawal of his guilty plea pursuant to Ohio Crim.R. 32.1.”

conviction and sentence, it cannot now be employed to reopen the appeal that dealt with the denial of Durden's motion to withdraw plea of guilty. *State v. Nelson*, 8th Dist. Cuyahoga No. 101228, 2015-Ohio-1734.

{¶4} In addition, no appellate judgment was announced and journalized by this court that reviewed Durden's conviction and sentence rendered in *State v. Durden*, Cuyahoga C.P. No. CR-91-271159. Thus, this court is prevented from considering Durden's application for reopening as made pursuant to App.R. 26(B). *State v. Loomer, supra*; *State v. Halliwell*, 8th Dist. Cuyahoga No. 70369, 1999 Ohio App. LEXIS 285 (Jan. 28, 1999).

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

MARY J. BOYLE, JUDGE

TIM McCORMACK, J., and
MARY EILEEN KILBANE, J., CONCUR