

[Cite as *State v. Battiste*, 2016-Ohio-7232.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION  
No. 102299

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JAYSON BATTISTE**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
APPLICATION DENIED

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Cuyahoga County Court of Common Pleas  
Case No. CR-13-579620-A  
Application for Reopening  
Motion No. 497564

**RELEASE DATE:** September 30, 2016

**FOR APPELLANT**

Jayson Battiste, pro se  
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P.O. Box 540  
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**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
By: Maxwell Martin  
    Mary M. Dyczek  
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EILEEN T. GALLAGHER, P.J.:

{¶1} Jayson Battiste has filed an application for reopening pursuant to App.R. 26(B). Battiste is attempting to reopen the appellate judgment rendered in *State v. Battiste*, 8th Dist. Cuyahoga No. 102299, 2015-Ohio-3586, that affirmed his conviction and sentence for the offense of sexual battery. We decline to reopen Battiste’s appeal.

{¶2} App.R. 26(B)(2)(b) requires that Battiste 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, Battiste is attempting to reopen the appellate judgment that was journalized on September 3, 2015. The application for reopening was not filed until June 22, 2016, more than 90 days after journalization of the appellate judgment in *Battiste, supra*. Battiste has failed to argue any showing of good cause for the untimely filing of his application for reopening. It must also be noted that Battiste has failed to comply with App.R. 26(B)(2)(d), which mandates that the applicant must attach to the application for reopening “a sworn statement of the basis for the claim that appellate counsel’s representation was deficient.” *State v. Doles*, 75 Ohio St.3d 604, 665 N.E.2d 197 (1996); *State v. Lechner*, 72 Ohio St.3d 374, 650 N.E.2d 449 (1995); *State v. Bates*, 8th Dist. Cuyahoga Nos. 97631, 97632, 97633, and 97634, 2015-Ohio-4176.

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

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EILEEN T. GALLAGHER, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and  
PATRICIA ANN BLACKMON, J., CONCUR