

[Cite as *State v. Trem*, 2016-Ohio-4952.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102894

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

JOSEPH TREM

DEFENDANT-APPELLEE

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-94-312378-A
Application for Reopening
Motion No. 496679

RELEASE DATE: July 13, 2016

FOR APPELLEE

Joseph Trem, pro se
Inmate No. A303512
Richland Correctional Institution
P.O. Box 8107
Mansfield, Ohio 44901

ATTORNEYS FOR APPELLANT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Daniel T. Van
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MELODY J. STEWART, J.:

{¶1} Joseph Trem has filed an App.R. 26(B) application for reopening. Trem is attempting to reopen the appellate judgment rendered in *State v. Trem*, 8th Dist. Cuyahoga No. 102894, 2016-Ohio-392, which affirmed the trial court’s classification of Trem as a sexually oriented offender under the former Megan’s Law. For the following reasons, we decline to reopen Trem’s appeal.

{¶2} App.R. 26(B)(2)(b) requires that Trem establish a showing of good cause for untimely filing if the application is filed more than 90 days after journalization of the appellate judgment, which is subject to reopening. The Supreme Court of Ohio, with regard to the 90-day deadline as provided by App.R. 26(B)(2)(b), has established that:

We 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.

State v. Gumm, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 7, 8, 10. 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); and *State v. Reddick*, 72 Ohio St.3d 88, 647 N.E.2d 784 (1995).

{¶3} Herein, Trem is attempting to reopen the appellate judgment that was journalized on February 4, 2016. The application for reopening was not filed until May 24, 2016, more than 90 days after journalization of the appellate judgment in *State v. Trem, supra*. Trem argues that clerical and oversight errors establish good cause for the untimely filing of his application for reopening. Specifically, Trem argues that:

Joseph Trem, herein Trem, requests leave to file his application to reopen his direct appeal from the decision entered by this Court on February 4, 2016, 20 days beyond the 90 day limit, for good cause shown. Trem submits that on April 12, 2016, he timely filed his application but inadvertently listed the wrong Case No. from *State v. Trem*, 2014-Ohio-4934 entered November 6, 2014, as opposed to CA-102894, entered February 4, 2016. On May 11, 2016, this Court denied the application accordingly.

Trem submits this application, with the corrected Appellate Court Case Number, entered in *State v. Trem*, 2016-Ohio-392, on February 4, 2016, and asks this court find good cause for the delay, based on the fact it was initially timely, but contained typographical error due to oversight.

{¶4} Trem, however, has failed to establish any good cause for the untimely filing of his application for reopening. *State v. Kinder*, 8th Dist. Cuyahoga No. 94722, 2012-Ohio-1339. This court has held that delay due to clerical and oversight errors, when attempting to file an application for reopening, does not establish “good cause” for filing beyond the 90-day limitation. *State v. Lewis*, 8th Dist. Cuyahoga Nos. 88627,

88628 and 88629, 2008-Ohio-679; *State v. Stockwell*, 8th Dist. Cuyahoga No. 78501, 2002 Ohio App. LEXIS 847 (Feb. 26, 2002). *See also State ex rel. Lindenschmidt v. Butler Cty. Bd. of Commrs.*, 72 Ohio St.3d 464, 650 N.E.2d 1343 (1995).

{¶5} It must also be noted that difficulty in conducting legal research or limited access to legal materials does not establish “good cause” for the untimely filing of an application for reopening. *State v. Houston*, 73 Ohio St.3d 346, 1995-Ohio-317, 652 N.E.2d 1018; *State v. Lawson*, 8th Dist. Cuyahoga No. 84402, 2006-Ohio-3939. Also, a lack of legal training, effort, or imagination, and ignorance of the law do not establish “good cause” for failure to seek timely relief pursuant to App.R. 26(B). *State v. Farrow*, 115 Ohio St.3d 205, 2007-Ohio-4792, 874 N.E.2d 526.

{¶6} Notwithstanding the fact that the application for reopening is untimely filed, we further find that App.R. 26(B) is not applicable to the appeal that Trem is attempting to reopen. App.R. 26(B) applies only to an appeal that concerned the judgment of conviction and sentence.

We affirm the judgment of the court of appeals. App.R. 26(B)(1) clearly provides 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.” (Emphasis added.) Since the judgment that [the applicant] complains about was an appeal from a motion to dismiss, and not an appeal from a judgment of conviction and sentence, no basis existed under App.R. 26(B) to reopen the appeal.

State v. Loomer, 76 Ohio St.3d 398, 667 N.E.2d 1209 (1996).

{¶7} Because App.R. 26(B) applies only to the direct appeal of a criminal conviction and sentence, it cannot be utilized to reopen the appeal that dealt with the

classification of Trem as a sexually oriented offender under the former Megan's Law.
See State v. Durden, 8th Dist. Cuyahoga No. 102322, 2015-Ohio-3235; *State v. Halliwell*,
8th Dist. Cuyahoga No. 70369, 1999 Ohio App. LEXIS 285 (Jan. 28, 1999).

{¶8} Application for reopening is denied.

MELODY J. STEWART, JUDGE

EILEEN T. GALLAGHER, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR