

[Cite as *State v. Redmond*, 2016-Ohio-5130.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 74738

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MAURICE REDMOND

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-332535
Application for Reopening
Motion No. 497316

RELEASE DATE: July 27, 2016

FOR APPELLANT

Maurice Redmond, pro se
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ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Diane Smilanick
Assistant County Prosecutor
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EILEEN T. GALLAGHER, J.:

{¶1} On June 10, 2016, the applicant, Maurice Redmond, pursuant to App.R. 26(B), applied to reopen this court's judgment in *State v. Redmond*, 8th Dist. Cuyahoga No. 74738, 1999 Ohio App. LEXIS 4108 (Sept. 2, 1999), in which this court affirmed Redmond's conviction for rape.¹ Redmond now claims that his appellate counsel was ineffective for not arguing that his plea was not knowingly and voluntarily made and that there was insufficient evidence to support a conviction for rape. For the following reasons, this court denies the application to reopen.

{¶2} App.R. 26(B)(1) and (2)(b) require applications claiming ineffective assistance of appellate counsel to be filed within 90 days from journalization of the decision unless the applicant shows good cause for filing at a later time. The June 2016 application was filed approximately 17 years after this court's September 2, 1999 decision.² Thus, the application is untimely on its face.

¹The grand jury indicted Redmond for kidnapping, rape with aggravated felony specifications, and corruption of a minor. Pursuant to a plea bargain, Redmond pled guilty to rape, the state nolleed the other charges and specifications, and the trial judge imposed an agreed sentence of six to 25 years. Redmond's appellate counsel argued that the plea was not voluntary and knowing because the state and the defense trial attorney misrepresented the aggregate possible minimum sentence for all the crimes with which he was charged.

²A review of the docket, shows that an appeal to the Supreme Court of Ohio was filed on Monday, October 18, 1999, and that the Supreme Court of Ohio dismissed the appeal in January 2000.

{¶3} In an effort to show good cause for untimely filing, Redmond proffers that his appellate counsel failed to file an App.R. 26(B) application on his behalf, and failed to notify him that they would not be representing him in such an application or in trying to appeal to the Supreme Court of Ohio.

{¶4} However, reliance on counsel or failure to communicate with counsel do not state good cause. In *State v. Lamar*, 8th Dist. Cuyahoga No. 49551, 1985 Ohio App. LEXIS 7284 (Oct. 15, 1985), *reopening disallowed* (Nov. 15, 1995), Motion No. 263398, this court held that lack of communication with appellate counsel did not show good cause. Similarly, in *State v. White*, 8th Dist. Cuyahoga No. 57944, 1991 Ohio App. LEXIS 357 (Jan. 31, 1991), *reopening disallowed* (Oct. 19, 1994), Motion No. 249174 and *State v. Allen*, 8th Dist. Cuyahoga No. 65806, 1994 Ohio App. LEXIS 4956 (Nov. 3, 1994), *reopening disallowed* (July 8, 1996), Motion No. 267054, this court rejected reliance on counsel as showing good cause. In *State v. Rios*, 75 Ohio App.3d 288, 599 N.E.2d 374 (8th Dist.1991), *reopening disallowed* (Sept. 18, 1995), Motion No. 266129, Rios maintained that the untimely filing of his application for reopening was primarily caused by the ineffective assistance of appellate counsel; again, this court rejected that excuse.

{¶5} Furthermore, the Supreme Court of Ohio in *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970, and *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, held that the 90-day deadline for filing must be strictly enforced. In those cases, the applicants argued that after the court of appeals decided

their cases, their appellate lawyers continued to represent them, and their appellate lawyers could not be expected to raise their own incompetence. Although the Supreme Court agreed with this latter principle, it rejected the argument that continued representation provided good cause. In both cases, the court ruled that the applicants could not ignore the 90-day deadline, even if it meant retaining new counsel or filing the applications themselves. The court then reaffirmed the principle that lack of effort, lack of imagination, and ignorance of the law do not establish good cause for failure to seek timely relief under App.R. 26(B).

{¶6} Moreover, these excuses do not explain the lapse of approximately 17 years. In *State v. Davis*, 86 Ohio St.3d 212, 214, 1999-Ohio-160, 714 N.E.2d 384, the Supreme Court of Ohio addressed a similar long lapse of time in filing the App.R. 26(B) application and ruled: “Even if we were to find good cause of earlier failures to file, any such good cause ‘has long since evaporated. Good cause can excuse the lack of a filing only while it exists, not for an indefinite period.’ *State v. Fox*, 83 Ohio St.3d 514, 516, 1998-Ohio-517, 700 N.E.2d 1253, 1254.”

{¶7} Accordingly, this court denies the application to reopen.

EILEEN T. GALLAGHER, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR