

[Cite as *State v. Cedeno*, 2017-Ohio-9150.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 97337

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

NOEL CEDENO

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-11-548513-A
Application for Reopening
Motion No. 512077

RELEASE DATE: December 19, 2017

FOR APPELLANT

Noel Cedenó, pro se
Inmate No. A662686
Belmont Correctional Institution
68518 Bannock Road
Saint Clairsville, Ohio 43950

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor
By: Scott C. Zarzycki
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

ANITA LASTER MAYS, J.:

{¶1} On November 14, 2017, the applicant, Noel Cedenó, filed an App.R. 26(B) application to reopen this court's judgment in *State v. Cedenó*, 8th Dist. Cuyahoga No. 97337, which this court dismissed for lack of a final, appealable order on March 2, 2012. In the application, Cedenó also refers to *State v. Cedenó*, 8th Dist. Cuyahoga No. 98500, 2013-Ohio-821, in which this court affirmed his convictions for rape and sexual battery.¹ Cedenó argues that his appellate counsel was ineffective because he did not properly sign the brief in Case No. 97337, because he caused delay in filing the record in Case No. 98500, because Cedenó did not consent to his appointment, because he did not argue improper questioning by the police, because he did not argue the lack of a certified translator, because he did not argue the victim's mental health disability, and because he did not argue lack of medical evidence. For the following reasons, this court denies the application.

{¶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

¹The victim testified that on the night of the incident, she had used marijuana and cocaine and had drunk both vodka and tequila. She was the best friend of Cedenó's wife and had decided to sleep on the couch at Cedenó's house. She testified that she fell asleep by 1:00 a.m. and at approximately 5:15 a.m., she was awakened when she felt her body jerking back and forth from Cedenó penetrating her vagina. She pushed Cedenó off and left immediately for her own home.

In August 2011, the trial judge found Cedenó guilty of rape and sexual battery, merged these offenses, and sentenced him to five years. After the trial judge corrected the finality problem, Cedenó appealed again in *State v. Cedenó*, 8th Dist. Cuyahoga No. 98500, 2013-Ohio-821.

decision unless the applicant shows good cause for filing at a later time. The November 2017 application was filed approximately four years and eight months after this court's decision in Case No. 98500 and over five years from this court's dismissal of Case No. 97337. Thus, it is untimely on its face. Cedeno does not proffer any good cause for the untimely filing.

{¶3} 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. Consistent enforcement of the deadline in Ohio protects the state's interest in finality and ensures that claims of ineffective assistance of appellate counsel are promptly resolved.

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

ANITA LASTER MAYS, JUDGE

TIM McCORMACK, P.J., and
MARY J. BOYLE, J., CONCUR