

[Cite as *State v. Manning*, 2018-Ohio-4333.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103879

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

STERLING MANNING, JR.

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case Nos. CR-14-589155-L and CR-15-595260-A
Application for Reopening
Motion No. 520142

RELEASE DATE: October 19, 2018

ATTORNEY FOR APPELLANT

Michael J. Goldberg
323 Lakeside Avenue, West - Suite 450
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

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

MARY J. BOYLE, J.:

{¶1} Applicant, Sterling Manning, seeks to reopen his direct appeal where this court affirmed his convictions for engaging in a pattern of corrupt activity, criminal gang activity, felonious assault, and voluntary manslaughter. *State v. Manning*, 8th Dist. Cuyahoga No. 103879, 2016-Ohio-5841. Manning proposes two assignments of error that appellate counsel failed to argue:

I. The [appellant] was not informed and/or counseled, and was misled by his attorneys, as to the full effect and consequences of his plea and thus he did not enter into his plea knowingly, intelligently, and voluntarily.

II. The [appellant] failed to receive effective assistance of counsel.

{¶2} Because the application is untimely without a showing of good cause, it is denied.

A. Good Cause for Untimeliness

{¶3} App.R. 26(B), a codification of the principles announced in *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992), provides a means for a criminal defendant to assert a claim that appellate counsel was ineffective. The rule requires that the application for reopening be filed within 90 days after the journalization of the appellate decision. App.R. 26(B)(1). The deadline set forth in App.R. 26(B)(1) and (B)(2)(b) is strictly enforced. *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970; *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861. However, according to the rule, where an applicant is able to establish good cause for the untimely filing, the application may be considered.

{¶4} The appellate decision was journalized on September 15, 2016. Under App.R. 26(B)(1), Manning was required to file his application within 90 days of that date. Instead, he filed his application on August 10, 2018 — almost two years later.

{¶5} In an effort to establish good cause under App.R. 26(B)(2)(b), Manning asserts that he has suffered from ineffective assistance of counsel at all levels in this matter. He argues that, as a result, his application should be deemed untimely filed but with good cause.

{¶6} This argument does not establish good cause. Manning does not advance any reason why the issues addressed in the proposed assignments of error could not have been discovered and addressed within the time period set forth in App.R. 26(B). Multiple levels of ineffective assistance of counsel does not establish good cause. An allegation that appellate counsel failed to raise and argue that trial counsel was ineffective is often raised in applications for reopening. Further, simply because counsel for Manning reviewed the record and discovered purported claims of ineffectiveness at this late date does not establish a showing of good cause.

{¶7} Manning’s arguments going to good cause amount to a claim that he could not have found the issues earlier because he was ignorant of the law, did not have counsel at that time, and did not discover the alleged errors.

{¶8} This court has previously found that such arguments do not constitute good cause. *State v. Orr*, 8th Dist. Cuyahoga No. 96377, 2014-Ohio-2384, _ 5 (“lack of knowledge or ignorance of the law does not provide sufficient cause for untimely filing.”); *State v. Russell*, 8th Dist. Cuyahoga No. 69311, 1997 Ohio App. LEXIS 2663, 3 (June 16, 1997), quoting *State v. Miller*, 8th Dist. Cuyahoga No. 59987, 1997 Ohio App. LEXIS 1120, 2 (Mar. 18, 1997), (“neither lack of counsel nor ignorance of the law have been accepted as constituting good cause for delayed filings.”). Therefore, Manning’s application is untimely without a showing of good cause.

{¶9} The Supreme Court of Ohio has upheld judgments denying applications for reopening solely on the basis that the application was untimely filed, and the applicant failed to show good cause for the untimely filing. *Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, at ¶ 7; *LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970.

{¶10} Also fatal to Manning’s application, App.R. 26(B)(2)(d) requires the inclusion of

[a] sworn statement of the basis for the claim that appellate counsel’s representation was deficient with respect to the assignments of error or arguments raised pursuant to division (B)(2)(c) of this rule and the manner in which the deficiency prejudicially affected the outcome of the appeal, which may include citations to applicable authorities and references to the record[.]

{¶11} Manning's application does not include any affidavit verifying the asserted claims. Such an affidavit is required. *State v. Lechner*, 72 Ohio St.3d 374, 375, 650 N.E.2d 449 (1995). Lack of an affidavit is sufficient grounds to deny the application. *Id.*; *State v. Taylor*, 8th Dist. Cuyahoga No. 104892, 2018-Ohio-264, _ 8.

{¶12} For the above reasons, Manning's application is not well taken.

{¶13} Application denied.

MARY J. BOYLE, JUDGE

EILEEN T. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR