

[Cite as *State v. Terry*, 2020-Ohio-3448.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 100813
 v. :
 :
 CAMILIA TERRY, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: June 19, 2020

Cuyahoga County Court of Common Pleas
Case No. CR-12-569331-A
Application for Reopening
Motion No. 536580

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Katherine E. Mullin, Assistant Prosecuting Attorney, *for appellee*.

Camilia Terry, *pro se*.

MARY EILEEN KILBANE, J.:

{¶ 1} Camilia Terry has filed an application for reopening pursuant to App.R. 26(B). Terry is attempting to reopen the appellate judgment rendered in *State v. Terry*, 8th Dist. Cuyahoga No. 100813, 2014-Ohio-4804, that affirmed the

conviction and the sentence of incarceration imposed in *State v. Terry*, Cuyahoga C.P. No. CR-12-569331-A for the offenses of aggravated murder, murder, felonious assault, endangering children, tampering with evidence, making false alarms, and abuse of a corpse. We decline to reopen Terry's appeal.

{¶ 2} App.R. 26(B)(2)(b) requires that Terry 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.

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, Terry is attempting to reopen the appellate judgment that was journalized on October 30, 2014. The application for reopening was not filed until March 2, 2020, more than five years and four months after journalization of the appellate judgment. Thus, the application for reopening is untimely on its face.

{¶ 4} In an attempt to argue good cause for the untimely filing of the application for reopening, Terry argues detrimental reliance upon appointed counsel, the inability to obtain a copy of the appellate opinion rendered by this court with regard to her appeal, lack of knowledge of the deadline for filing a timely App.R. 26(B) application for reopening, the inability to obtain a transcript in a timely fashion, and the lack of counsel to prosecute her App.R. 26(B) application for reopening.

{¶ 5} Reliance upon appellate counsel does not establish good cause for the untimely filing of an application for reopening. *State v. White*, 8th Dist. Cuyahoga No. 101576, 2017-Ohio-7169; *State v. Huber*, 8th Dist. Cuyahoga No. 93923, 2011-Ohio-3240; *State v. Koreisl*, 8th Dist. Cuyahoga No. 90950, 2011-Ohio-6438; *State v. Hudson*, 8th Dist. Cuyahoga No. 91803, 2010-Ohio-2879. *See also State v. Nicholson*, 8th Dist. Cuyahoga No. 82825, 2004-Ohio-2394, *reopening disallowed*, 2006-Ohio-3020 (recognizing that ineffective assistance of appellate counsel is not a sufficient excuse to support an untimely filing for an application to reopen). Additionally, lack of knowledge or ignorance of the time constraint, applicable to an application for reopening per App.R. 26(B), does not provide sufficient cause for untimely filing. *Hudson* at ¶ 7, citing *State v. Klein*, 8th Dist. Cuyahoga No. 58389,

1991 Ohio App. LEXIS 1346 (Mar. 28, 1991), *reopening disallowed* (Mar. 15, 1994), motion No. 249260, *aff'd*, 69 Ohio St. 3d 1481, 634 N.E.2d 1027 (1994).

{¶ 6} Moreover, this court has repeatedly held that difficulty in obtaining the transcript does not constitute good cause. *State v. Tomlinson*, 8th Dist. Cuyahoga No. 83411, 2005-Ohio-5844; *State v. Waller*, 8th Dist. Cuyahoga No. 87279, 2007-Ohio-6188. Also, in *State v. Towns*, 8th Dist. Cuyahoga No. 71244, 1997 Ohio App. LEXIS 4709 (Oct. 23, 1997), *reopening disallowed*, 2000 Ohio App. LEXIS 2030 (May 4, 2000), the applicant endeavored to show good cause for untimely filing by arguing that appellate counsel was uncooperative and refused to send the applicant any documents concerning the case. This court rejected that argument, ruling that being a layman and experiencing delays in obtaining records related to one's conviction are not sufficient basis for establishing good cause for untimely filing of an application for reopening. *Id.* at ¶ 3. *State v. Bussey*, 8th Dist. Cuyahoga No. 75301, 1999 Ohio App. LEXIS 5707, 1999 WL 1087494 (Dec. 2, 1999) *reopening disallowed*, 2000 Ohio App. LEXIS 3614, 2000 WL 1146811 (Aug. 8, 2000); *Newburgh Hts. v. Chauncey*, 8th Dist. Cuyahoga No. 75465, 1999 Ohio App. LEXIS 3732, 1999 WL 608801 (Aug. 12, 1999), *reopening disallowed*, 2000 Ohio App. LEXIS 6261, 2000 WL 33126876 (Oct. 20, 2000); *State v. Chandler*, 8th Dist. Cuyahoga No. 59764, 1992 Ohio App. LEXIS 975, 1992 WL 41856 (Mar. 5, 1992), *reopening disallowed*, 2001 Ohio App. LEXIS 3624, 2001 WL 931661 (Aug. 13, 2001) — (counsel's delays in sending applicant the transcript and refusing access to parts of the transcript did not state good cause).

{¶ 7} The claim of a lack of counsel to file the application for reopening does not constitute good cause because Terry possesses no right to counsel with regard to the App.R. 26(B) application for reopening. An application for reopening is a collateral postconviction remedy, civil in nature, and the state has no constitutional obligation to provide counsel to those defendants who file applications under that rule. *State v. Tyford*, 106 Ohio St.3d 176, 2005-Ohio-4380, 833 N.E.2d 289; *Morgan v. Eads*, 104 Ohio St.3d 142, 2004-Ohio-6110, 818 N.E.2d 1157. Terry is entitled to counsel only if the application for reopening is granted and the appeal is reopened. See App.R. 26(B)(6)(a).

{¶ 8} Finally, the Supreme Court of Ohio has established that good cause cannot excuse the lack of timely filing for an indefinite period of time:

Good cause can excuse the lack of a filing only while it exists, not for an indefinite period. See *State v. Hill* (1997), 78 Ohio St.3d 174, 1997-Ohio 293, 677 N.E.2d 337; *State v. Carter* (1994), 70 Ohio St.3d 642, 1994-Ohio 55, 640 N.E.2d 811. We specifically reject [applicant's] claim that once an applicant has established good cause for filing more than ninety days after journalization * * *, it does not matter when the application is filed.

State v. Davis, 86 Ohio St.3d 212, 214, 1999-Ohio-160, 714 N.E.2d 384.

{¶ 9} Herein, the appellate judgment subject to reopening was journalized on October 30, 2014. More than five years have passed since we rendered our appellate opinion. Thus, we find that even if good cause was established, the time for filing an application for reopening has long passed. *State v. Williams*, 8th Dist. Cuyahoga No. 106266, 2019-Ohio-4780; *State v. Churn*, 8th Dist. Cuyahoga No.

105782, 2019-Ohio-4052; *State v. Marshall*, 8th Dist. Cuyahoga No. 87334, 2019-Ohio-1114; *State v. McCornell*, 8th Dist. Cuyahoga No. 93274, 2015-Ohio-3764.

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

MARY EILEEN KILBANE, JUDGE

SEAN C. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR