

[Cite as *State v. Lucas*, 2021-Ohio-3027.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 108436
 v. :
 :
 CHARLES LUCAS, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: August 30, 2021

Cuyahoga County Court of Common Pleas
Case No. CR-16-609934-A
Application for Reopening
Motion No. 548394

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Anthony T. Miranda, Assistant Prosecuting Attorney, *for appellee*.

Charles Lucas, *pro se*.

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Charles Lucas has filed a second App.R. 26(B) application for reopening of the appellate judgment that was rendered by this court in *State v. Lucas*, 8th Dist. Cuyahoga No. 108436, 2020-Ohio-1602.

{¶ 2} On February 12, 2021, this court denied Lucas’s initial application for reopening because he failed to demonstrate that: 1) he was prejudiced by appellate counsel’s performance on appeal; and 2) there existed no reasonable probability that the results of the appeal would have been different had this court considered the proposed assignments of error raised through the application for reopening. On August 2, 2021, Lucas filed a second App.R. 26(B) application for reopening.

{¶ 3} App.R. 26(B)(2)(b) requires that Lucas 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, regarding 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, 1996-Ohio-52, 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).

{¶ 4} Herein, Lucas is attempting to reopen the appellate judgment that was journalized on April 23, 2020. The current application for reopening was not filed until August 2, 2021, more than 90 days after journalization of the appellate judgment in *Lucas, supra*. Lucas has failed to argue any showing of good cause for the untimely filing of his second application for reopening. *State v. McCrimon*, 8th Dist. Cuyahoga No. 87617, 2017-Ohio-5742; *State v. Hammond*, 8th Dist. Cuyahoga No. 100656, 2016-Ohio-8300; *State v. Battiste*, 8th Dist. Cuyahoga No. 102299, 2016-Ohio-7232.

{¶ 5} Of greater significance is the fact that Lucas is not permitted to file a second application for reopening. *State v. Twyford*, 106 Ohio St.3d 176, 2005-Ohio-4380, 833 N.E.2d 289. There exists no right to file successive applications for reopening under App.R. 26(B). *State v. Williams*, 99 Ohio St.3d 179, 2003-Ohio-3079, 790 N.E.2d 299. *See also State v. Cooley*, 99 Ohio St.3d 345, 2003-Ohio-3914, 792 N.E.2d 720; *State v. Richardson*, 74 Ohio St.3d 235, 658 N.E.2d 273 (1996); *State v. Cheren*, 73 Ohio St.3d 137, 652 N.E.2d 707 (1995).

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

A handwritten signature in cursive script, reading "Frank D. Celebrezze, Jr.", positioned above a horizontal line.

FRANK D. CELEBREZZE, JR., JUDGE

MARY J. BOYLE, A.J., and
MARY EILEEN KILBANE, J., CONCUR