

[Cite as *State v. Lawrence*, 2021-Ohio-3357.]

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 109951  
 v. :  
 :  
 HOWARD LAWRENCE, :  
 :  
 Defendant-Appellant. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: APPLICATION DENIED**  
**RELEASED AND JOURNALIZED: September 17, 2021**

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Cuyahoga County Court of Common Pleas  
Case No. CR-13-570740-A  
Application for Reopening  
Motion No. 548458

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Mary M. Frey, Assistant Prosecuting Attorney, *for appellee*.

Howard Lawrence, *pro se*.

EMANUELLA D. GROVES, J.:

{¶ 1} Applicant, Howard Lawrence, seeks to reopen his appeal in *State v. Lawrence*, 8th Dist. Cuyahoga No. 109951, 2021-Ohio-2105. This was an appeal

from the denial of a postconviction relief petition. Because an application for reopening is not applicable to an appeal from such a filing, the application is denied.

### **Factual and Procedural History**

{¶ 2} Lawrence was found guilty of several charges related to a December 15, 2012 armed robbery, and was sentenced to a 21-year prison term. He and the state appealed. *State v. Lawrence*, 8th Dist. Cuyahoga Nos. 100371 and 100387, 2014-Ohio-4797. This court affirmed his convictions, but remanded to correct an error in the sentencing entry and for resentencing so that the trial court could impose terms of incarceration for firearm specifications consecutive to the 21-year prison sentence, which the trial court did.

{¶ 3} On November 1, 2018, Lawrence filed an untimely application to reopen that appeal. *State v. Lawrence*, 8th Dist. Cuyahoga Nos. 100371 and 100387, 2019-Ohio-65. There, Lawrence argued that this court failed to address the assignments of error raised in a pro se supplemental brief that was filed in that appeal. This court denied the untimely application for reopening because Lawrence failed to allege sufficient good cause to excuse his tardy filing.

{¶ 4} Next, Lawrence filed a “motion to vacate void judgment” in the trial court on April 14, 2020. The trial court denied the motion, and Lawrence appealed. *Lawrence*, 8th Dist. Cuyahoga No. 109951, 2021-Ohio-2105. He argued the trial court erred in denying his motion because his right to a speedy trial was violated. In an opinion journalized June 24, 2021, we classified the filing in the trial court as a postconviction relief petition, and rejected the argument that his convictions were

void as a result of a speedy trial violation, affirming the trial court's decision. *Id.* at ¶ 17. We further found that the argument was barred by res judicata. *Id.* at ¶ 15.

{¶ 5} Lawrence timely filed the instant application for reopening on August 9, 2021. There, he argued that the claims raised by his motion to vacate void judgment were not barred by res judicata because he raised these claims in a supplemental brief in his first appeal and in his first application for reopening. The state filed a timely brief in opposition arguing that App.R. 26(B) did not apply to the underlying appeal.

#### **Applicability of App.R. 26(B)**

{¶ 6} An application for reopening is a limited procedural vehicle to raise claims of constitutionally inadequate representation during an appeal. App.R. 26(B) defines the limits of such a claim. It provides in part, “A defendant in a criminal case may apply for reopening of the appeal from *the judgment of conviction and sentence*, based on a claim of ineffective assistance of appellate counsel.” (Emphasis added.) App.R. 26(B)(1).

{¶ 7} This court, interpreting this language, has determined that App.R. 26(B) “does not apply to subsequent postconviction proceedings, including resentencing, motions to vacate sentence and hearings to determine the propriety of guilty pleas.” *State v. Perotti*, 8th Dist. Cuyahoga No. 73743, 2005-Ohio-2175, ¶ 3, citing *State v. Loomer*, 76 Ohio St.3d 398, 667 N.E.2d 1209 (1996). *See also State v. Smith*, 8th Dist. Cuyahoga No. 108727, 2021-Ohio-202, ¶ 3, citing *Perotti*. A postconviction relief petition or motion to vacate void judgment is a civil, collateral

proceeding to which no constitutional right to counsel exists. *State v. Steffen*, 70 Ohio St.3d 399, 410, 639 N.E.2d 67 (1994); *State v. Calhoun*, 86 Ohio St.3d 279, 281, 714 N.E.2d 905 (1999). *See also Morgan v. Eads*, 104 Ohio St.3d 142, 2004-Ohio-6110, 818 N.E.2d 1157.

{¶ 8} Lawrence's attempt to reopen an appeal from a judgment denying a collateral, civil attack on the judgment of conviction must fail because App.R. 26(B) only applies to appeals from *the judgment of conviction and sentence*.

{¶ 9} Accordingly, the application is denied.

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EMANUELLA D. GROVES, JUDGE

LARRY A. JONES, SR., P.J., and  
KATHLEEN ANN KEOUGH, J., CONCUR