

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO

Appellee

v.

ROBERT WILCOX

Appellant

C.A. 2013-CA-94

Trial Court Case No. 13CR457A

**ORDER ON MOTION FOR LEAVE TO
FILE A DELAYED APPEAL**

PER CURIAM:

{¶ 1} This matter is before the court upon Defendant-Appellant Robert Wilcox’s December 18, 2023 motion for leave to file a delayed appeal from his criminal conviction and sentence. If allowed, however, it would be the second appeal filed from the final judgment in Wilcox’s criminal case. In fact, Wilcox has filed his motion for leave to file a delayed appeal under the same appellate case number as his timely filed direct appeal. Wilcox acknowledges that he had counsel on appeal but claims he “was not satisfied” with appellate counsel’s arguments and contends that his appellate counsel provided ineffective assistance of appellate counsel. For the following reasons, we deny Wilcox’s motion.

{¶ 2} By way of background, Wilcox was convicted of six felony offenses, which

resulted in an aggregate prison sentence of 20.5 years. Following his convictions, he timely appealed to this court, arguing that his trial counsel rendered ineffective assistance of counsel, that the trial court should have merged three offenses for sentencing purposes, that the convictions were against the manifest weight of the evidence, that the sentence was too long, that he should not have to serve the imposed prison terms consecutively, and that his conviction for tampering with evidence was not supported by sufficient evidence. *State v. Wilcox*, 2d Dist. Clark No. 2013-CA-94, 2014-Ohio-4954, ¶ 1. On November 7, 2014, we reversed Wilcox's conviction for tampering with evidence and affirmed the judgment of the trial court in all other respects. *Id.*

{¶ 3} On December 18, 2023, Wilcox filed the pending motion for a delayed appeal. Pursuant to App.R. 5, a defendant in a criminal proceeding may file a motion for leave to file a delayed appeal when he or she failed to perfect an appeal as of right within the 30-day deadline provided by App.R. 4(A). The motion "shall set forth the reasons for the failure of the appellant to perfect an appeal as of right." App.R. 5(A)(2). Wilcox perfected a timely appeal on October 29, 2013, and we decided the appeal on the merits in November 2014. Therefore, Wilcox cannot demonstrate any reason that he failed to perfect an appeal as of right as required under App.R. 5(A)(2).

{¶ 4} Furthermore, a motion for a delayed appeal pursuant to App.R. 5 "cannot be utilized as a means of maintaining successive appeals from the same judgment." (Citations omitted.) *State v. Howard*, 2d Dist. Montgomery No. 27748, 2017-Ohio-9395, ¶ 3. "A defendant in a criminal case who has perfected and prosecuted a direct appeal is not entitled to a second appeal by way of a delayed appeal." *Rocky River v. Garneck*,

8th Dist. Cuyahoga No. 99072, 2013-Ohio-1565, ¶ 14. Accordingly, Wilcox's motion for leave to file a delayed appeal is overruled.

{¶ 5} Nevertheless, Wilcox argues in his motion that his appellate counsel acted deficiently by failing to raise several arguments on appeal that require reversal of his convictions. Although captioned a motion for leave to file a delayed appeal, the substance of Wilcox's motion more reasonably falls under the rubric of an application for reopening an appeal pursuant to App.R. 26(B). "Courts may recast irregular motions into whatever category necessary to identify and establish the criteria by which the motion should be judged." (Citations omitted.) *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12. To the extent Wilcox intended his motion to constitute an application for reopening, it is denied as untimely.

{¶ 6} "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." App.R. 26(B)(1). "An application for reopening shall be filed in the court of appeals where the appeal was decided within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time." App.R. 26(B)(2)(b).

{¶ 7} Here, the judgment in the appeal that Wilcox presumably seeks to reopen was journalized on November 7, 2014. The pending motion/application was not filed until December 18, 2023—clearly beyond the 90-day time limit. Because Wilcox's application is untimely, App.R. 26(B)(2)(b) requires that he establish "a showing of good cause for untimely filing."

{¶ 8} Wilcox does not address why his application for reopening (if construed as

such) was untimely filed. However, it appears that Wilcox's explanation for the delay in filing is that it took years of learning the law to discover that his counsel was ineffective. But Wilcox cannot rely on his own lack of legal education to excuse his failure to comply with the deadline. "Lack of effort or imagination, and ignorance of the law, are not such circumstances and do not automatically establish good cause for failure" to timely file an application for reopening under App.R. 26(B). *State v. Reddick*, 72 Ohio St.3d 88, 91, 647 N.E.2d 784 (1995).

{¶ 9} Further, we are reminded of the Ohio Supreme Court's guidance that "[c]onsistent 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." *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 7. Due to Wilcox's failure to establish a showing of good cause for the untimely filing of his application for reopening, the application is denied.

SO ORDERED.



CHRISTOPHER B. EPLEY, PRESIDING JUDGE



MICHAEL L. TUCKER, JUDGE

Ronald C. Lewis

RONALD C. LEWIS, JUDGE