

[Cite as *State v. Dew*, 2014-Ohio-4042.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,)	
)	CASE NO. 08 MA 62
PLAINTIFF-APPELLEE,)	
)	
- VS -)	OPINION
)	AND
GREGORY DEW,)	JUDGMENT ENTRY
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS: Motion for Delayed Reconsideration or, Delayed Application for Reopening, Criminal Appeal from Common Pleas Court, Case No. 07 CR 378.

JUDGMENT: Motion and Application Denied.

APPEARANCES:
For Plaintiff-Appellee: Attorney Paul J. Gains
Prosecuting Attorney
Attorney Ralph Rivera
Asst. Prosecuting Attorney
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For Defendant-Appellant: Gregory Dew, Pro-se
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JUDGES:
Hon. Mary DeGenaro
Hon. Joseph J. Vukovich
Hon. Cheryl Waite

Dated: September 5, 2014

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PER CURIAM:

{¶1} Appellant Gregory Dew, pro-se, has filed a motion for delayed reconsideration, or in the alternative, delayed application for reopening his appeal based on "the failure to ensure the preservation of the original recording of a wiretap" for the "trial/appellate record in Appellant's direct appeal." However, Dew's application is untimely and accordingly, his motion and application are denied.

{¶2} Dew was convicted of four counts of rape, two counts of gross sexual imposition, and one count of corruption of a minor on April 1, 2008, in the Mahoning County Court of Common Pleas, following a jury trial. The trial court sentenced him to an aggregate term of 43 years of imprisonment. On December 1, 2009, this court reversed and vacated the trial court's judgment in part, holding that one count of gross sexual imposition and one count of rape were not supported by sufficient evidence because the State failed to set forth evidence of "force or threat of force." This court upheld the remainder of Dew's convictions, resulting in a 31.5 year sentence. *State v. Dew*, 7th Dist. No. 08 MA 62, 2009-Ohio-6537.

{¶3} On December 14, 2009, Dew filed a motion for reconsideration, which was denied on January 21, 2010. On March 25, 2011, Dew filed a pro-se motion entitled "Appellant's Request to Extend the Number of Pages for Delayed Application for Reopening Pursuant to Appellate Rule 26(B)," which this court denied on April 14, 2011. Dew filed this same motion again on April 29, 2011, and it was again denied for the same reasons on May 17, 2011.

{¶4} On November 14, 2011, Dew filed a pro-se application to reopen his appeal. Because Dew failed to establish good cause, his application for reopening was denied. *State v. Dew*, 7th Dist. No. 08 MA 62, 2012-Ohio-434.

{¶5} Two weeks after filing the pro-se application for reopening, Dew, pro-se, filed a "Motion to Obtain Grand Jury Transcripts" and the "Motion for an Order Finding Defendant was Unavoidably Prevented from the Discovery of the Evidence upon which He Relies." The latter motion asked the trial court to allow him leave to file a delayed motion for new trial pursuant to Crim.R. 33(B). The trial court found it was without

jurisdiction to rule on both motions. This court determined that the trial court did have jurisdiction to rule on the Crim.R. 33 motion but held the request for grand jury transcripts was barred by res judicata. The judgment of the trial court was affirmed in part and reversed and remanded in part with instructions for the trial court to rule on the motion for leave to file a delayed Crim.R. 33 motion based on newly discovered evidence. *State v. Dew*, 7th Dist. No. 12 MA 18, 2013-Ohio-2549. On October 29, 2013, the trial court overruled Dew's motion for a new trial, and the appeal of this judgment is currently pending before this court. *State v. Dew*, 7th Dist. No. 13 MA 174.

{¶6} On June 5, 2014, in the present matter, Dew pro-se filed a motion for delayed reconsideration pursuant to App.R. 26(A) or in the alternative, delayed application for reopening his appeal pursuant to App.R. 26(B)(1). This is the second time Dew has sought reconsideration of our decision in his direct appeal. The Appellate Rules make no provisions for successive motions for reconsideration; thus Dew's motion can be rejected on this basis alone. See *State v. Peeples*, 73 Ohio St.3d 149, 1995-Ohio-36, 652 N.E.2d 717.

{¶7} Regardless of the foregoing, Dew has not fulfilled the requirements of App.R. 26(A). This court issued its decision on December 1, 2009, and this second motion was not filed until June 5, 2014. A motion for reconsideration can be entertained even though it was filed beyond the ten-day limitation provided for by the rule if the motion raises an issue of sufficient importance to warrant entertaining it beyond the ten-day limit. See *Carroll v. Feiel*, 1 Ohio App.3d 145, 439 N.E.2d 962 (1981).

{¶8} A review of Dew's motion does not set forth any issue of sufficient importance to require a waiver of the ten-day requirement of App.R. 26(A). As such, Dew's motion for delayed reconsideration under App.R. 26(A) is meritless and is denied.

{¶9} Alternatively, Dew argues that his delayed application for reopening should be granted pursuant to App.R. 26(B)(1). This is the second time Dew has sought to reopen his direct appeal. The Appellate Rules make no provisions for successive applications for reopening; thus Dew's motion can be rejected on this basis alone.

{¶10} Nevertheless, App.R. 26(B) allows a criminal defendant to challenge the constitutional effectiveness of appellate counsel by reopening the appeal. However, the

rule provides that an application for reopening must be filed "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). Dew has failed to meet this deadline. As stated above, our opinion in his direct appeal was journalized on December 1, 2009. Dew filed his delayed application for reopening on June 5, 2014, over four years after the deadline expired. Thus, this court can only review the merits of Dew's application if he can establish good cause for his untimely filing.

{¶11} Dew claims that his filing is untimely due to only recently being made aware of appellate counsel's ineffectiveness "during the filing of his current appeal for the denial of his Motion for New Trial" in Case Number 13 MA 174. The appeal in that case was filed on November 12, 2013. Even if this were the case, Dew has failed to explain why he did not file his delayed application to reopen his appeal by February 10, 2014, ninety days after he made the realization and filed his appeal in 13 MA 174. Instead, he delayed filing his application for almost another four months without attempting to show good cause for that delay. Thus, even if Dew did have good cause for the initial delay, there is no indication of good cause to file four months after that discovery was made. See *State v. Wright*, 7th Dist. No. 03 MA 112, 2005-Ohio-4501, ¶3, citing *State v. Thompson*, 7th Dist. No. 97-JE-40, 2003-Ohio-1607 at ¶7.

{¶12} Because Dew has failed to meet the requisite time frames for reconsideration and reopening his appeal, the merits cannot be addressed and his motion and application are hereby denied.

DeGenaro, P.J., concurs.

Vukovich, P., concurs.

Waite, P., concurs.