

NO. 14-1884

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 90845

STATE OF OHIO,

Plaintiff-Appellee

-vs-

Patrick Williams

Defendant-Appellant

STATE OF OHIO'S MEMORANDUM IN RESPONSE TO JURISDICTION

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**THIS CASE DOES NOT PRESENT A SUBSTANTIAL CONSTITUTIONAL QUESTION
AND IS NOT A MATTER OF GREAT AND GENERAL PUBLIC INTEREST**

This Honorable Court should deny jurisdiction over the present case because it is not one that involves a substantial constitutional question; nor do any of Appellant's propositions of law raise matters of great and general public interest. Appellant was properly convicted of Aggravated Murder and two counts of Felonious Assault which were ultimately affirmed on appeal. Five years after the Eighth District affirmed Appellant's conviction, the Eighth District correctly determined that Appellant had failed to demonstrate good cause for untimely filing an application for reopening his appeal.

Appellant presents four propositions of law; the first proposition of law being the only one relevant to this appeal. The Eighth District correctly denied Appellant's application for reopening because Appellant failed to present good cause for filing his application almost five years after the 90 day deadline in App.R. 26(B) had passed. As such, the Eighth District never reviewed the substantive claims found with Appellant's application. Appellant's second, third, and fourth propositions all deal with the merits of his application and are only presented here in order to influence this Court. However, since the Eighth District only denied Appellant's application for being untimely, the only question properly raised before this Court is whether the Eighth District's denial of Appellant's application presents a substantial constitutional question or is a matter of great and general public interest. It does not.

In his first proposition of law, Appellant is asking this Honorable Court to draft a bright line rule that would undermine the purposes of the 90 day deadline set forth in App.R. 26(B) for an application to reopen an appeal. This Honorable Court has recognized that consistent enforcement of this rule's deadline protects not only the State's "legitimate interest in the finality of judgments," but it also ensures 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. Appellant’s proposed bright line rule would allow any young appellant to essentially bypass the deadline set forth in App.R. 26(B) when filing an application to reopen an appeal based the reliance he placed in his appellate counsel.

Regardless of age, it cannot be disputed that almost every criminal defendant relies on their trial counsel, as well as their appellate counsel, when traversing their way through the criminal justice system. As such, Appellant’s proposition of law would grant good cause for any young appellant to bypass the 90 day deadline set forth in App.R. 26(B), thereby undermining the deadline’s intended purposes when it comes to younger appellants. Without more, such a minimal standard is not sufficient to establish good cause.

As is evident with the case at bar, in the past five years, and particularly within the first 90 days after his appellate decision was journalized, Appellant always had the opportunity to retain new counsel in order to review the alleged errors set forth in his application for reopening. Since this avenue was always available to him, the fact that he did not take the opportunity to do so does not amount to good cause for missing the deadline set forth in App.R. 26(B) by five years. Appellant’s young age alone cannot justify good cause for his lack of effort in applying to reopen his appeal.

It is for these reasons that jurisdiction should be denied.

STATEMENT OF THE CASE AND FACTS

On March 30, 2007, Appellant, Patrick Williams, was charged by the Cuyahoga County Grand Jury in a five count indictment. Appellant was charged with one count of Aggravated Murder, one count of Murder, and three counts of Felonious Assault. The case proceeded to trial and on November 2, 2007, the jury returned a verdict finding Appellant guilty of one count of

Aggravated Murder with a firearm specification; one count of Murder with a firearm specification; and two counts of Felonious Assault, with firearm specifications. On November 30, 2007, Appellant was sentenced to a total aggregate prison term of life in prison, with a possibility of parole after 20 years, with the one and three year firearm specifications to run prior to and consecutive to life on Count one. The remaining counts running concurrent to Count One.

On December 28, 2007, Appellant filed a Notice of Appeal with the trial court. On appeal Appellant raised four assignments error, asserting insufficiency of the evidence, the convictions were against the manifest weight of the evidence, the trial court erred by giving the jury a flight instruction, and ineffective assistance of counsel. On May 11, 2009, the Eighth District affirmed the judgment of the trial court. *State v. Williams*, 8th Dist. Cuyahoga No. 90845, 2009-Ohio-2026. (*Williams I*).

Five years later, on May 29, 2014, Appellant filed a Motion to Reopen his Appeal. The Eighth District Court of Appeals denied Appellant's Application to Reopen because it was untimely, and Appellant had failed to provide good cause for filing an untimely application. *State v. Williams*, 8th Dist. Cuyahoga No. 90845, 2014-Ohio-4196, ¶ 10 (*Williams II*)

LAW AND ARGUMENT

APPELLANT'S PROPOSITION OF LAW I: A MOTION TO REOPEN AN APPEAL, WHERE THE APPLICANT DEMONSTRATES GOOD CAUSE FOR LATE FILING, DUE TO TENDER AGE AND DETRIMENTAL RELIANCE UPON APPELLATE COUNSEL, REOPENING SHOULD BE GRANTED BY THE LOWER COURT.

Ohio Rules of Appellate Procedure, Rule 26(B) allows for a defendant in a criminal case to apply for a reopening of their appeal based on ineffective assistance of appellate counsel. "An application for reopening shall be granted if there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal." App.R. 26(B)(5).

In order to be timely, an appellant must file an application to reopen within 90 days after the journalization of the appellate judgment. App.R. 26(B)(1). This Honorable Court has recognized that consistent enforcement of this rule's deadline protects not only the State's "legitimate interest in the finality of judgments," but it also ensures 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.

The Eighth District correctly determined that Appellant had failed to establish good cause to justify filing an application for reopening almost five years after the deadline had expired. The crux of Appellant's argument for good cause is that he had very little contact with his appellate lawyer during the appellate process. However, as the Eighth District pointed out, "[i]t is well settled that 'neither misplaced reliance on counsel nor lack of communication between counsel and appellant provides good cause for a late filing of his application for reopening.'" *Williams II* at ¶ 7, quoting *State v. Gray*, 8th Dist. Cuyahoga No. 92646, 2012-Ohio-3565, ¶ 3. *See also State v. Alt*, 8th Dist. Cuyahoga No. 96289, 2012-Ohio-2054; *State v. Austin*, 8th Dist. Cuyahoga No. 87169, 2012-Ohio-1338; *State v. Alexander*, 8th Dist. Cuyahoga No. 81529, 2004-Ohio-3861. Furthermore, a lack of communication between appellate counsel and Appellant does not explain why Appellant would wait five years before he would obtain new counsel to file an application for reopening. Appellant easily could have retained new counsel within the 90 day time period, let alone within the past five years.

Appellant also states that his young age should also justify good cause for a late filing. However, as the Eighth District noted, this argument is the equivalent of "arguing that his ignorance of the law or lack of legal training and knowledge should establish good cause for delayed filing." *Williams II* at ¶ 8. However, it is well established that this is not grounds that will

provide good cause to allow an appellate court to review an application that is filed five years beyond the established deadline in App.R. 26(B). *Id. See also State v. Mosely*, 8th Dist. Cuyahoga No. 79463, 2005-Ohio-4137. An appellant’s “[l]ack of effort or imagination, and ignorance of the law * * * do not automatically establish good cause for failure to seek timely relief under App.R. 26(B).” *Williams II* at ¶ 9, quoting *State v. Lamar*, 102 Ohio St. 467, 2004-Ohio-3976, 812 N.E.2d 970, ¶ 9.

In the past five years, and particularly within the first 90 days after his appellate decision was journalized, Appellant always had the opportunity to retain new counsel in order to review the alleged errors set forth in his application for reopening. Since this avenue was always available to him, the fact that he did not take the opportunity to do so does not amount to good cause for missing the deadline set forth in App.R. 26(B) by five years.

The bright line rule that Appellant wishes this Honorable Court to now set would allow any young appellant to bypass the deadline set forth in App.R. 26(B) solely by the virtue of their young age. Appellant cites to no authority that would justify such a broad erosion of the principles the deadline in App.R. 26(B) was meant to protect; specifically the State’s “legitimate interest in the finality of judgments,” and that “any claims of ineffective assistance of appellate counsel are [to be] promptly examined and resolved.” *Gumm* at ¶ 7. As such, Appellant has failed to demonstrate that his proposed proposition of law presents a substantial constitutional question or that it is a matter of great and general public interest.

CONCLUSION

Based on well-established principles and precedents, the Eighth District correctly declined to accept Appellant’s proposed bright-line rule and correctly determined that Appellant had failed

to show good cause as to why it took him five years to file an application for reopening, well beyond the 90 day deadline set forth in App.R. 26(B).

Appellant's remaining propositions of law are not addressed because they deal with the substance of his application for reopening. The Eighth District never decided the merits of his application as Appellant failed to demonstrate good cause in filing the application five years past the 90 day deadline.

It is for these reasons that this case does not involve a substantial constitutional question, nor is it a matter of great and general public interest; therefore jurisdiction should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Response has been sent via U.S. regular mail this the 24th day of November, 2014 to:

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