

[Cite as *State v. Hudson*, 2016-Ohio-4795.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE OF OHIO)	CASE NO. 11 MA 0077
)	
PLAINTIFF-APPELLEE)	
)	
VS.)	OPINION AND
)	JUDGMENT ENTRY
)	
CHARLES HUDSON)	
)	
DEFENDANT-APPELLANT)	

CHARACTER OF PROCEEDINGS: Appellant's Delayed Application for Reopening
Case No. 09 CR 1190

JUDGMENT: Overruled.

APPEARANCES:

For Plaintiff-Appellee: Atty. Paul J. Gains
Mahoning County Prosecutor
Atty. Ralph M. Rivera
Assistant Prosecuting Attorney
21 West Boardman Street, 6th Floor
Youngstown, Ohio 44503

For Defendant-Appellant: Charles Hudson, *Pro se*, #601-894
Lorain Correctional Institution
2075 South Avon Belden Road,
Grafton, Ohio 44044.

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Carol Ann Robb

Dated: June 29, 2016

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WAITE, J.

{¶1} Appellant Charles Hudson has filed a delayed Application for Reopening his appeal pursuant to App.R. 26(B). A criminal defendant 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). The applicant seeking reopening cannot merely allege that appellate counsel rendered ineffective assistance for failing to brief certain issues. Rather, the application must demonstrate that 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).

{¶2} Pursuant to App.R. 26(B), Appellant was required to file his application for reopening within 90 days of the journalization of our judgment entry. “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.” *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 7.

{¶3} We issued our judgment entry and opinion in the direct appeal giving rise to this proceeding on December 9, 2013. To be considered timely, Appellant must have filed his application for delayed reopening on or before February 10, 2014. Appellant filed his application on November 24, 2015 and concedes that he is untimely. If an application for reopening is not filed within the 90–day period set forth in App.R. 26(B)(1), an appellant must make a showing of good cause for the untimely filing. App.R. 26(B)(2).

{¶4} For good cause, Appellant contends that his attorney neglected to file the application and that he was unaware of the rules regarding an application to reopen an appeal. “Simple attorney neglect is not a reason for excusing a litigant's failure to comply with time requirements.” *State v. Stockwell*, 8th Dist. No. 78501, 2002 WL 377134 (Feb. 26, 2002), citing *State ex rel. Lindenschmidt v. Board of Commissioners of Butler County*, 72 Ohio St.3d 464, 466, 650 N.E.2d 1343 (1995); see also, *State v. Lewis*, 8th Dist. Nos. 88627, 88628, 88629, 2008-Ohio-679, ¶ 8. Hence, Appellant has failed to demonstrate good cause for the delay in seeking reopening.

{¶5} Even if we were to examine the application, there is no basis for granting it. The application for reopening pursuant to App.R. 26(B) must contain: “One or more assignments of error or arguments in support of assignments of error that previously were not considered on the merits in the case by any appellate court or that were considered on an incomplete record because of appellate counsel's deficient representation.” App.R. 26(B)(2)(c); *State v. Ludt*, 7th Dist. No. 07 MA 107, 2009-Ohio-2214. Appellant presents no assignments of error. He simply argues that his counsel did not present any winning issues and failed to file a further appeal. Because Appellant's application is nothing more than a bare unsupported request to reopen the appeal, it is overruled.

Waite, J., concurs.

Donofrio, P.J., concurs.

Robb, J., concurs.