

COURT OF APPEALS OF OHIO, SEVENTH APPELLATE DISTRICT,  
BELMONT COUNTY

State v. Bender

2025-Ohio-5664 (7th Dist. 2025) · No. 23 BE 0012 · Decided December 17, 2025

SUMMARY

The Seventh District Court of Appeals of Ohio denied William Herbert Bender II's application to reopen his criminal appeal under Ohio Appellate Rule 26(B). The court held that the application was untimely and that the appellant failed to establish good cause for filing more than 90 days after journalization of the appellate judgment. The court also explained that ignorance of the rule and waiting for Ohio Supreme Court proceedings to conclude did not constitute good cause.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                               |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Ohio, Seventh Appellate District, Belmont County                                                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Mark A. Hanni; Cheryl L. Waite; Katelyn Dickey                                                                                                                                                                                                                                                                                                |
| JURISDICTION          | Court of Appeals of Ohio, Seventh Appellate District, Belmont County                                                                                                                                                                                                                                                                          |
| DECIDED               | December 17, 2025                                                                                                                                                                                                                                                                                                                             |
| DOCKET                | 23 BE 0012                                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | denied                                                                                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | Defendant-appellant applied under Ohio Appellate Rule 26(B) to reopen his criminal appeal based on ineffective assistance of appellate counsel. The Court of Appeals denied the application as untimely because the defendant failed to establish good cause for filing more than ninety days after journalization of the appellate judgment. |
| PRECEDENTIAL VALUE    | Published Ohio Court of Appeals opinion                                                                                                                                                                                                                                                                                                       |
| PARTIES               | William Herbert Bender, II v. State of Ohio                                                                                                                                                                                                                                                                                                   |

TOPICS

- appellate procedure
- post-conviction relief
- criminal procedure
- preservation of error

PRACTICE AREAS

- criminal appellate procedure
- post-conviction relief
- ineffective assistance of appellate counsel

## QUESTIONS PRESENTED

1. Whether Bender established good cause for filing his App.R. 26(B) application more than ninety days after journalization of the appellate judgment.
2. Whether ignorance of App.R. 26(B), lack of legal training, the need to compile documentation, and pending Ohio Supreme Court proceedings constituted good cause for the untimely application.

## HOLDINGS

1. An App.R. 26(B) application filed outside the ninety-day period is untimely, and the applicant must establish good cause for the delay.
2. Lack of legal training and ignorance of the law, including ignorance of App.R. 26(B), do not constitute good cause for an untimely application to reopen.
3. The pendency or anticipated resolution of direct-review or habeas proceedings in the Ohio Supreme Court does not constitute good cause for delaying an App.R. 26(B) application.

## KEY QUOTATIONS

*“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.” (¶ 5)*

*“Accordingly, we deny Appellant’s App.R. 26(B) application for reopening because he failed to demonstrate good cause for his untimely filing.” (¶ 12)*

## FACTUAL BACKGROUND

Bender was convicted and sentenced to an aggregate term of four to six years for trafficking in cocaine, a second-degree felony under R.C. 2925.03(A)(1) and (C)(4)(D). The Seventh District affirmed the conviction and sentence on December 20, 2023. Bender waited until November 7, 2025, to seek reopening under App.R. 26(B), explaining that he had only recently learned of the rule and wanted to await completion of proceedings in the Ohio Supreme Court.

## PROCEDURAL HISTORY

Bender was convicted of trafficking in cocaine and sentenced to an aggregate prison term of four to six years. The Seventh District affirmed his convictions and sentence on December 20, 2023. The Ohio Supreme Court declined discretionary review, and later sua sponte dismissed Bender’s habeas corpus petition. Bender filed his App.R. 26(B) application on November 7, 2025, and the court denied it as untimely without good cause.

## DISPOSITION

denied

## CASES CITED

- State v. Bender, 2023-Ohio-4737 (7th Dist.)

- State v. Bender, 2024-Ohio-1228
- State ex rel. Bender v. Smith, 2025-Ohio-4476
- State v. Winstead, 74 Ohio St.3d 277, 278 (1996)
- State v. Gumm, 2004-Ohio-4755
- State v. Reddick, 72 Ohio St.3d 88, 91 (1995)
- State v. Kinney, 2024-Ohio-5018, ¶¶ 4-5 (7th Dist.)
- State v. Tolliver, 2005-Ohio-2194, ¶ 14 (10th Dist.)

## OPINION

PER CURIAM.

[Cite as State v. Bender, 2025-Ohio-5664.] IN THE COURT OF APPEALS OF OHIO SEVENTH APPELLATE DISTRICT BELMONT COUNTY STATE OF OHIO, Plaintiff-Appellee, v. WILLIAM HERBERT BENDER, II, Defendant-Appellant. OPINION AND JUDGMENT ENTRY Case No. 23 BE 0012 Application to Reopen BEFORE: Mark A. Hanni, Cheryl L. Waite, Katelyn Dickey, Judges. JUDGMENT: Denied. Atty.

J. Kevin Flanagan, Belmont County Prosecutor, and Atty. Jacob A. Manning, Assistant Prosecuting Attorney, Belmont County Prosecutor's Office, for Plaintiff- Appellee and William H. Bender, II, Pro se, Defendant-Appellant. Dated: December 17, 2025 –2– PER CURIAM. {¶1} Appellant William Herbert Bender, II has filed an application to reopen his appeal pursuant to App.R.

26(B). He submits he recently learned of App.R. 26(B) and he needed more time to finalize proceedings in the Ohio Supreme Court. He raises two assignments of error, neither of which assert the ineffectiveness of appellate counsel.

For the following reasons, we deny Appellant's application as untimely filed without good cause. Factual and Procedural History {¶2} Appellant was convicted and sentenced to a total prison term of 4 to 6 years. He was sentenced for trafficking in cocaine, a second-degree felony in violation of R.C. 2925.03(A)(1) and (C)(4)(D). {¶3} Appellant filed an appeal of his conviction and sentence.

On December 20, 2023, we affirmed Appellant's convictions and sentence in State v. Bender, 2023-Ohio- 4737 (7th Dist.). Appellant appealed to the Ohio Supreme Court, but that Court declined to accept his appeal for review on April 2, 2024. State v. Bender, 2024-Ohio-1228. Appellant further filed a petition for a writ of habeas corpus in the Ohio Supreme Court, which the Court sua sponte dismissed.

State ex rel. Bender v. Smith, 2025-Ohio-4476. {¶4} On November 7, 2025, Appellant filed the instant App.R. 26(B) application to reopen our December 20, 2023 decision affirming the trial court's judgment of conviction and sentence. Untimely Filing {¶5} App.R. 26(B)(1) provides that:

(1) 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.

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. Case No. 23 BE 0012 –3– {¶6} Appellant’s application is untimely. His App.R. 26(B) application was due 90 days from our December 20, 2023 judgment.

The instant application was filed on November 7, 2025. {¶7} Appellant submits he untimely filed the instant petition because he just recently learned of App.R. 26(B). He also submits it made sense to wait until the Ohio Supreme Court finalized his direct appeal and petition for a writ of habeas corpus before filing the instant application. He asserts he needed more time to compile documentation. {¶8} Appellant has not established good cause for his untimely filing of the instant application.

The 90-day requirement in the rule applies to all appellants. *State v. Winstead*, 74 Ohio St.3d 277, 278 (1996). {¶9} Lack of legal training and ignorance of the law do not constitute good cause for the untimely filing of an App.R. 26(B) application. *State v. Gumm*, 2004-Ohio-4755, quoting *State v. Reddick*, 72 Ohio St.3d 88, 91 (1995).

Thus, Appellant’s lack of knowledge concerning App.R. 26(B) does not excuse his failure to timely file the application. {¶10} Further, we have rejected Appellant’s additional explanation for the untimely filing of an App.R. 26(B) application.

In *State v. Kinney*, 2024-Ohio-5018, ¶ 4-5 (7th Dist.), we held that the appellant had no legal reason to delay filing his App.R. 26(B) application until after the Ohio Supreme Court resolved his direct appeal. We held that we had jurisdiction to consider the App.R. 26(B) application, even when a direct appeal was pending before the Ohio Supreme Court. *Id.* at ¶ 4, quoting *State v. Tolliver*, 2005- Ohio-2194, ¶ 14 (10th Dist.).

Accordingly, we held that Kinney failed to establish good cause for his untimely filing of an App.R. 26(B) in this Court because he had a pending appeal before Ohio Supreme Court. *Id.* at ¶ 5. {¶11} Similarly here, we reject Appellant’s assertion that he delayed filing his App.R. 26(B) application because he wanted to wait for proceedings in the Ohio Supreme Court to be finalized.

This explanation does not constitute good cause for Appellant’s untimely filing of his App.R. 26(B) application. {¶12} Accordingly, we deny Appellant’s App.R. 26(B) application for reopening because he failed to demonstrate good cause for his untimely filing. Case No. 23 BE 0012 –4– JUDGE MARK A. HANNI JUDGE CHERYL L. WAITE JUDGE KATELYN DICKEY NOTICE TO COUNSEL This document constitutes a final judgment entry.

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