

[Cite as *State v. Johnson*, 2018-Ohio-952.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 99822

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ERIC JOHNSON

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-12-567736-A
Application for Reopening
Motion No. 514177

RELEASE DATE: March 14, 2018

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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PATRICIA ANN BLACKMON, J.:

{¶1} Applicant, Eric Johnson, seeks to reopen his appeal claiming that appellate counsel was ineffective for failing to argue that attempted murder was not a crime in Ohio during the relevant period. Having reviewed the record and relevant law, this court declines to reopen his appeal. The apposite facts follow.

{¶2} On January 23, 2018, Johnson, pursuant to App.R. 26(B) and *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992), applied to reopen this court's February 13, 2014 judgment in *State v. Johnson*, 8th Dist. Cuyahoga No. 99822, 2014-Ohio-494. There, Johnson's convictions and sentences for aggravated robbery, kidnapping, and attempted murder were affirmed. The state of Ohio did not file a brief in opposition to Johnson's application.

Timeliness of the Application

{¶3} App.R. 26(B)(1) and (B)(2)(b) require applications claiming ineffective assistance of appellate counsel to be filed within 90 days from the date the appellate decision was journalized, unless the applicant shows good cause for filing at a later time. The 90-day deadline for filing an application for reopening must be strictly enforced. *State v. Lamar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970; *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861.

{¶4} Johnson filed his application on January 23, 2018 — almost four years after this court issued its decision in the underlying case. Thus, it is untimely on its face.

{¶5} Johnson fails to allege any reason for his delay. An untimely application must set forth good cause for tardiness. Johnson has failed to show good cause. Because the lack of good cause precludes our consideration of the untimely application, the substantive merits of the application cannot be addressed. *State ex rel. Wood v. McClelland*, 140 Ohio St.3d 331, 2014-Ohio-3969, 18 N.E.3d 423, ¶ 13.

{¶6} Application denied.

PATRICIA ANN BLACKMON, JUDGE _____

EILEEN A. GALLAGHER, A.J., and
MARY J. BOYLE, J., CONCUR