

[Cite as *State v. Henderson*, 2019-Ohio-1120.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106627

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANTONIO HENDERSON

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-17-613454-A
Application for Reopening
Motion No. 525834

RELEASE DATE: March 26, 2019

FOR APPELLANT

Antonio Henderson, pro se
Inmate No. 703371
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, Ohio 44030-8000

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor
By: Sarah Denney
Assistant County Prosecutor
Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶1} On February 20, 2019, the applicant, Antonio Henderson, pursuant to App.R. 26(B), applied to reopen this court's judgment in *State v. Henderson*, 8th Dist. Cuyahoga No. 106627, 2018-Ohio-3797, in which this court affirmed his convictions for felonious assault, domestic violence, and criminal damaging. Henderson now asserts that his appellate counsel was ineffective for failing to argue (1) that his trial counsel should have moved to waive court costs because Henderson is indigent, and (2) that the trial court lacked jurisdiction to try the case because his jury waiver did not strictly comply with R.C. 2945.05. For the following reasons, this court, sua sponte, denies the application.

{¶2} App.R. 26(B)(1) and (2)(b) require applications claiming ineffective assistance of appellate counsel to be filed within 90 days from journalization of the decision unless the

applicant shows good cause for filing at a later time. The February 20, 2019 application was filed approximately 153 days after this court's September 20, 2018 decision. Thus, it is untimely on its face. Moreover, Henderson makes no effort to establish good cause.

{¶3} The Supreme Court of Ohio in *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970, and *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, held that the 90-day deadline for filing must be strictly enforced. In those cases, the applicants argued that after the court of appeals decided their cases, their appellate lawyers continued to represent them, and their appellate lawyers could not be expected to raise their own incompetence. Although the Supreme Court agreed with this latter principle, it rejected the argument that continued representation provided good cause. In both cases, the court ruled that the applicants could not ignore the 90-day deadline, even if it meant retaining new counsel or filing the applications themselves. The court then reaffirmed the principle that lack of effort, lack of imagination, and ignorance of the law do not establish good cause for failure to seek timely relief under App.R. 26(B).

{¶4} Accordingly, this court denies the application to reopen as untimely.

MARY J. BOYLE, JUDGE

EILEEN T. GALLAGHER, P.J., and
MICHELLE J. SHEEHAN, J., CONCUR