

**THE STATE OF OHIO, APPELLEE, v. HANCOCK, APPELLANT.**

**[Cite as *State v. Hancock*, 108 Ohio St.3d 194, 2006-Ohio-658.]**

*Criminal law — Appellate procedure — Application to reopen direct appeal — App.R. 26(B) — Application denied as untimely.*

(No. 2004-1024 — Submitted January 11, 2006 — Decided March 1, 2006.)

APPEAL from the Court of Appeals for Warren County, Nos. CA2001-12-115, CA2001-12-116, and CA2002-01-004, 2003-Ohio-1616.

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**Per Curiam.**

{¶ 1} Appellant, Timothy Hancock, challenges the denial of his application to reopen his direct appeal pursuant to App.R. 26(B).

{¶ 2} Hancock was convicted of the aggravated murder of Jason Wagner with death specifications. After the penalty phase, the jury recommended a death sentence. However, before sentencing, the trial court declared a mistrial of the penalty phase and — without weighing the aggravating circumstances against the mitigating factors — sentenced Hancock to life imprisonment without the possibility of parole.

{¶ 3} On December 31, 2001, the state filed a notice of appeal and a motion for leave to appeal with respect to the sentence. The Court of Appeals for Warren County granted leave to appeal. On January 3, 2002, the trial court appointed the Ohio Public Defender to represent Hancock on appeal, and Hancock filed a cross-appeal. Assistant Public Defender Joseph E. Wilhelm represented Hancock in the court of appeals.

{¶ 4} The court of appeals sustained two of the state's three assignments of error, overruled Hancock's assignments on cross-appeal, vacated the life sentence, and remanded the case to the trial court for resentencing. *State v.*

*Hancock*, Warren App. Nos. CA2001-12-115, CA2001-12-116, CA2002-01-004, 2003-Ohio-1616, 2003 WL 1689612, appeal not accepted, 99 Ohio St.3d 1513, 2003-Ohio-3957, 792 N.E.2d 200. The court of appeals journalized its judgment on March 31, 2003.

{¶ 5} On October 22, 2003, the trial court sentenced Hancock to death on remand. Assistant Public Defender Wilhelm continued to represent Hancock for purposes of his direct appeal to this court. On February 1, 2006, this court vacated Hancock's death sentence and remanded the cause for further proceedings. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, 840 N.E.2d 1032.

{¶ 6} In November 2003, the Public Defender assigned Assistant Public Defender Wendi Dotson to represent Hancock to pursue claims on postconviction review pursuant to R.C. 2953.21. On March 11, 2004, represented by Dotson and Assistant Public Defender Rachel Troutman, Hancock filed with the court of appeals an application to reopen his appeal, pursuant to App.R. 26(B). The application alleged that his appellate counsel before the court of appeals had rendered ineffective assistance by failing to raise certain issues.

{¶ 7} On June 4, 2004, the court of appeals denied Hancock's application as untimely. Hancock appeals the denial of his application to reopen. We affirm.

{¶ 8} Hancock's App.R. 26(B) application was untimely. App.R. 26(B)(1) requires that an application for reopening be filed "within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time." The appellate judgment was journalized on March 31, 2003. Thus, absent good cause for filing late, Hancock had until June 30, 2003 to file his application.

{¶ 9} In his application, Hancock claimed to have good cause for filing late because the Public Defender did not assign his current counsel to his case

until “late November 2003.” We disagree. Hancock offers no reasonable explanation as to why the Public Defender’s office — which has been representing Hancock since January 3, 2002 — waited until November 2003 to assign counsel to work on an application that should have been filed the previous June. Moreover, Hancock could have obtained other counsel or could have filed an application himself. “What he could not do was ignore the rule’s filing deadline.” *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 8.

{¶ 10} For the foregoing reasons, we affirm the judgment of the court of appeals.

Judgment affirmed.

MOYER, C.J., RESNICK, PFEIFER, LUNDBERG STRATTON, O’CONNOR,  
O’DONNELL and LANZINGER, JJ., concur.

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David H. Bodiker, Ohio Public Defender, Wendi Dotson, and Rachel Troutman, Assistant State Public Defenders, for appellant.

Rachel Hutzler, Warren County Prosecuting Attorney, Andrew L. Sievers, and Mary K. Hand, Assistant Prosecuting Attorneys, for appellee.

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