

[Cite as *State v. Hines*, 2006-Ohio-1096.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 84218

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|--------------------------|---|----------------------------------------|
| STATE OF OHIO | : | |
| | : | JOURNAL ENTRY |
| Plaintiff-Appellee | : | AND |
| | : | OPINION |
| vs. | : | |
| | : | |
| DAVID HINES | : | |
| | : | |
| Defendant-Appellant | : | |
| | : | |
| | : | |
| DATE OF JOURNALIZATION | : | MARCH 6, 2006 |
| | : | |
| CHARACTER OF PROCEEDINGS | : | Application for Reopening, |
| | : | Motion No. 378832 |
| | : | Lower Court No. CR-430692 |
| | : | Common Pleas Court |
| | : | |
| JUDGMENT | : | APPLICATION DENIED. |
| APPEARANCES: | | |
| | | |
| For plaintiff-appellee: | | WILLIAM D. MASON |
| | | Cuyahoga County Prosecutor |
| | | BY: AMY VENESILE |
| | | Assistant County Prosecutor |
| | | Justice Center - 9 th Floor |
| | | 1200 Ontario Street |
| | | Cleveland, Ohio 44113 |
| | | |
| For defendant-appellant: | | DAVID L. HINES, pro se |
| | | Inmate No. 461-691 |
| | | P.O. Box 901 |
| | | Leavittsburg, Ohio 44430 |

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ANN DYKE, A.J.:

{¶ 1} David Lee Hines has filed an application for reopening pursuant to App.R. 26(B). Hines is attempting to reopen the appellate judgment that was rendered by this court in *State v. Hines*, Cuyahoga App. No. 84218, 2005-Ohio-4421. We decline to reopen Hines' original appeal.

{¶ 2} As required by App.R. 26(B)(2)(b), Hines must establish "a showing of good cause for untimely filing if the application is filed more than ninety days after journalization of the appellate judgment" which is subject to reopening. The Supreme Court of Ohio, with regard to the ninety-day deadline as provided by App.R. 26(B)(2)(b), has recently established that:

We now reject Gumm's claim that those excuses gave him good cause to miss the 90-day deadline in App.R. 26(B). The rule was amended to include the 90-day deadline more than seven months before Gumm's appeal of right was decided by the court of appeals in February 1994, so the rule was firmly established then, just as it is today. **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.** Ohio and other states "may erect reasonable procedural requirements for triggering the right to an adjudication," *Logan v. Zimmerman Brush Co.* (1982), 455 U.S. 422, 437, 102 S.Ct 1148, 71 L.Ed 2d 265, and that is what Ohio has done by **creating a 90-day deadline for the filing of applications to reopen.** Gumm could have retained new attorneys after the court of appeals issued its decision in 1994, or he could have filed the application on his own. What he could not do was ignore the rule's filing deadline. * * * **The 90-day requirement in the rule is "applicable to all appellants,"** *State v. Winstead* (1996), 74 Ohio St.3d 277, 278, 1996 Ohio 52, 658 N.E.2d 722, and Gumm offers no

sound reason why he - unlike so many other Ohio criminal defendants - could not comply with that fundamental aspect of the rule. (Emphasis added.)

State v. Gumm, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, at 163.

{¶ 3} See, also, *State v. Lamar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970; *State v. Cooley*, 73 Ohio St.3d 411, 1995-Ohio-328, 653 N.E.2d 252; *State v. Reddick*, 72 Ohio St.3d 88, 1995-Ohio-249, 647 N.E.2d 784. Herein, Hines is attempting to reopen the appellate judgment that was journalized on September 6, 2005. The application for reopening was not filed until December 9, 2005, more than ninety days after journalization of the appellate judgement in *State v. Hines*, supra. Hines has failed to establish "a showing of good cause" for the untimely filing of his application for reopening. *State v. Klein* (Apr. 8, 1991), Cuyahoga App. No. 58389, reopening disallowed (Mar. 15, 1994), Motion No. 49260, affirmed (1994), 69 Ohio St.3d 1481; *State v. Trammell* (July 24, 1995), Cuyahoga App. No. 67834, reopening disallowed (Apr. 22, 1996), Motion No. 70493; *State v. Travis* (Apr. 5, 1990), Cuyahoga App. No. 56825, reopening disallowed (Nov. 2, 1994), Motion No. 51073, affirmed (1995), 72 Ohio St.3d 317.

{¶ 4} Accordingly, the application for reopening is denied.

ANN DYKE
ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., CONCURS

CHRISTINE T. MCMONAGLE, J., CONCURS