

[Cite as *State v. Quiles*, 2006-Ohio-7324.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 84293

STATE OF OHIO	:	
	:	JOURNAL ENTRY
Plaintiff-Appellee*	:	AND
	:	OPINION
vs.	:	
	:	
FABIAN QUILES	:	
	:	
Defendant-Appellant	:	
	:	
	:	
DATE OF JOURNALIZATION	:	MAY 24, 2006
	:	
CHARACTER OF PROCEEDINGS	:	Application for Reopening,
	:	Motion No. 372157
	:	Lower Court No. CR-445034
	:	Common Pleas Court
	:	
JUDGMENT	:	APPLICATION DENIED.
APPEARANCES:		
For plaintiff-appellee:		WILLIAM D. MASON
		Cuyahoga County Prosecutor
		BY: EDWARD G. LENTZ
		Assistant County Prosecutor
		Justice Center - 9 th Floor
		1200 Ontario Street
		Cleveland, Ohio 44113
For defendant-appellant:		FABIAN QUILES, pro se
		Inmate No. 461-954
		Marion Correctional Inst.
		P.O. Box 57
		Marion, Ohio 43301

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JUDGE KENNETH A. ROCCO:

{¶ 1} In *State v. Quiles*, Cuyahoga County Court of Common Pleas Case No. CR-445034, applicant was convicted of assault and intimidation. This court affirmed that judgment in *State v. Quiles*, Cuyahoga App. No. 84293, 2005-Ohio-388. The Supreme Court of Ohio did not accept applicant's appeal for review. *State v. Quiles*, 107 Ohio St.3d 1408, 2005-Ohio-5859, 836 N.E.2d 1228.

{¶ 2} Applicant has filed with the clerk of this court an application for reopening. Applicant asserts that he was denied the effective assistance of appellate counsel because -- on direct appeal -- appellate counsel did not argue various assignments of error which Quiles now proposes. We deny the application for reopening. As required by App.R. 26(B)(6), the reasons for our denial follow.

{¶ 3} Initially, we note that App.R. 26(B)(1) provides, in part: "An application for reopening shall be filed *** within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time." App.R. 26(B)(2)(b) requires that an application for reopening include "a showing of good cause for untimely filing if the application is filed more than ninety days after journalization of the appellate judgment."

{¶ 4} This court's decision affirming applicant's conviction was journalized on February 14, 2005. The application was filed on May 27, 2005, clearly in excess of the ninety-day limit.

{¶ 5} The Supreme Court has upheld judgments denying applications for reopening solely on the basis that the application was not timely filed and the applicant failed to show "good cause for filing at a later time." App.R. 26(B)(1). See, e.g., *State v. Gumm*, 103

Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861; *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970. We need not, therefore, examine the merits of this application if Quiles failed to demonstrate good cause for failing to file a timely application.

{¶ 6} The application includes Quiles’s “Affidavit of Good Cause Showing” in which he avers that the application was untimely because: his counsel and the court did not notify him of the deadline for filing an application; he appealed to the Supreme Court of Ohio which imposed “enormious [sic] costs”; delays in the law library; no reply from his appellate counsel; and he notified counsel for the state of his intention to file an application. Yet, an attorney’s failure to inform the defendant/client of the status of the direct appeal does not constitute good cause. *State v. Carmon*, Cuyahoga App. No. 75377, 2005-Ohio-5463, at ¶9. Similarly, it is well-established that limited access to legal materials or a library does not constitute good cause for the late filing of an application for reopening. *State v. Stearns* (Feb. 14, 2002), Cuyahoga App. No. 76513, at 4 (citations deleted). Likewise, being indigent does not constitute good cause. *State v. Alexander*, Cuyahoga App. No. 81529, 2004-Ohio-3861, at ¶4. Additionally, Quiles has not provided this court with any authority under which a prospective applicant’s having notified counsel for the state of the applicant’s intention to file an application extends the time for filing set forth in App.R. 26(B).

{¶ 7} Applicant’s failure to demonstrate good cause is a sufficient basis for denying the application for reopening. See also: *State v. Collier* (June 11, 1987), Cuyahoga App. No. 51993, reopening disallowed 2005-Ohio-5797, Motion No. 370333; *State v. Garcia*

(July 8, 1999), Cuyahoga App. No. 74427, reopening disallowed 2005-Ohio-5796, Motion No. 370916. As a consequence, applicant has not met the standard for reopening.

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

KENNETH A. ROCCO
JUDGE

ANN DYKE, A.J., CONCURS

JAMES J. SWEENEY, J., CONCURS

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