

[Cite as *State v. Peyton*, 2007-Ohio-263.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 86797

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ERIC PEYTON

DEFENDANT-APPELLANT

JUDGMENT: APPLICATION DENIED

APPLICATION FOR REOPENING
MOTION NO. 390683
LOWER COURT NO. CR-453483
COMMON PLEAS COURT

RELEASE DATE: January 24, 2007

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JUDGE COLLEEN CONWAY COONEY:

{¶ 1} Eric Peyton has filed an application for reopening pursuant to App.R. 26(B). Peyton is attempting to reopen the appellate judgment rendered in *State v. Peyton*, Cuyahoga App. No. 86797, 2006-Ohio-3951, that affirmed his convictions for aggravated robbery and having weapons while under disability, but remanded the case for resentencing. We decline to reopen Peyton’s appeal.

{¶ 2} App.R. 26(B)(2)(b) requires that Peyton establish “a showing of good cause for untimely filing if the application is filed more than 90 days after

journalization of the appellate judgment,” which is subject to reopening. The Ohio Supreme Court, with regard to the 90-day deadline 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, 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 ¶7.

{¶ 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, Peyton is attempting to reopen the appellate judgment that was journalized on August 14,

2006. The application for reopening was not filed until November 15, 2006, more than 90 days after journalization of the appellate judgment in *State v. Peyton*, supra.

Peyton 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. See, also, *State v. Gaston*, Cuyahoga App. No. 79626, 2007-Ohio-155; *State v. Torres*, Cuyahoga App. No. 86530, 2007-Ohio-9.

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

COLLEEN CONWAY COONEY,
PRESIDING JUDGE

CHRISTINE T. MCMONAGLE, J., and
PATRICIA A. BLACKMON, J., CONCUR

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