

[Cite as *State v. Vinson*, 2008-Ohio-137.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION  
**No. 87056, 87058 and 87060**

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JAMES VINSON**

DEFENDANT-APPELLANT

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**JUDGMENT: APPLICATION DENIED**

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APPLICATION FOR REOPENING  
MOTION NO. 402348  
LOWER COURT NO. CR-442710, 450233 and 436841  
COMMON PLEAS COURT

**RELEASE DATE:** January 15, 2008

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**ATTORNEY FOR PLAINTIFF-APPELLEE**

WILLIAM D. MASON  
Cuyahoga County Prosecutor  
Mary H. McGrath  
Assistant County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

**FOR DEFENDANT-APPELLANT**

James D. Vinson, pro se  
Inmate No. 491-644  
Lake Erie Correctional Inst.  
P.O. Box 8000  
Conneaut, Ohio 44030

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SEAN C. GALLAGHER, J.:

{¶ 1} James Vinson has filed an application for reopening pursuant to App.R. 26(B). Vinson is attempting to reopen the appellate judgment that was rendered in *State v. Vinson*, Cuyahoga App. Nos. 87056, 87058 and 87060, 2006-Ohio-3971, which affirmed his conviction for the offenses of felonious assault with peace officer specifications, aggravated assault, and possession of drugs. We decline to reopen Vinson’s appeal.

{¶ 2} App.R. 26(B)(2)(b) requires that Vinson 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 as provided by App.R. 26(B)(2)(b), has recently established that:

{¶ 3} “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.

{¶ 4} “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.”** *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, at ¶7 (emphasis added). 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.

{¶ 5} Herein, Vinson is attempting to reopen the appellate judgment that was journalized on August 14, 2006. The application for reopening was not filed until October 24, 2007, more than 90 days after journalization of the appellate judgment in *State v. Vinson*, supra. Vinson 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.

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

SEAN C. GALLAGHER, PRESIDING JUDGE

ANTHONY O. CALABRESE, JR., J., and  
CHRISTINE T. MCMONAGLE, J., CONCUR