

[Cite as *State v. Ali*, 2009-Ohio-1233.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 88147**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**OSIRIS ALI**

DEFENDANT-APPELLANT

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**JUDGMENT: APPLICATION DENIED**

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APPLICATION FOR REOPENING  
MOTION NO. 415806  
LOWER COURT NO. CR-465969  
COMMON PLEAS COURT

**RELEASE DATE:** March 18, 2009

**ATTORNEYS FOR PLAINTIFF-APPELLEE**

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**FOR DEFENDANT-APPELLANT**

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PATRICIA A. BLACKMON, J.:

{¶ 1} Osiris Ali has filed an application for reopening pursuant to App.R. 26(B). Ali is attempting to reopen the appellate judgment, as rendered in *State v. Ali*<sup>1</sup>, which affirmed his conviction for the offenses of kidnapping, gross sexual imposition, rape, and unlawful sexual conduct with a minor. We decline to reopen Ali’s appeal.

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

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<sup>1</sup>Cuyahoga App. No. 88147, 2007-Ohio-3776.

journalization of the appellate judgment,” which is subject to reopening. The Supreme Court of Ohio, 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.”<sup>2</sup> (Emphasis added.)**

{¶ 5} Herein, Ali is attempting to reopen the appellate judgment that was journalized on August 16, 2007. The application for reopening was not filed until November 26, 2008, more than 90 days after journalization of the appellate judgement in *State v. Ali*, supra. Ali has failed to establish “a showing of good cause” for the untimely filing of his application for reopening.<sup>3</sup>

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

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PATRICIA A. BLACKMON, JUDGE

SEAN C. GALLAGHER, P.J., and  
KENNETH A. ROCCO, J., CONCUR

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<sup>2</sup> *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, at ¶7. 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.

<sup>3</sup> *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* (Jan. 1, 2007), Cuyahoga App. No. 79626; *State v. Torres*, Cuyahoga App. No. 86530, 2007-Ohio-9.

