

[Cite as *State v. Pickett*, 2009-Ohio-2873.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 88265**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

VS.

**CORY PICKETT**

DEFENDANT-APPELLANT

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**JUDGMENT: APPLICATION DENIED**

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APPLICATION FOR REOPENING  
MOTION NO. 421946  
LOWER COURT NO. CR-467495  
COMMON PLEAS COURT

**RELEASE DATE:** June 15, 2009

**ATTORNEYS FOR PLAINTIFF-APPELLEE**

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**FOR DEFENDANT-APPELLANT**

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JUDGE ANN DYKE:

{¶ 1} On May 11, 2009 Cory Pickett filed an application for reopening pursuant to App. R. 26(B). He is attempting to reopen the appellate judgment that was rendered by this court in *State v. Pickett*, Cuyahoga App. No. 88265, 2007-Ohio-3899. In that opinion, we affirmed Pickett's convictions for rape, gross sexual imposition, and kidnapping. For the following reason, we decline to reopen Pickett's appeal:

{¶ 2} 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."

{¶ 3} This court's decision affirming Pickett's convictions was journalized on August 13, 2007. However, Pickett did not file his application for reopening until May 11, 2009, clearly in excess of the ninety-day limit.

{¶ 4} 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 Pickett failed to demonstrate good cause for failing to file a timely application.

{¶ 5} In his application, Pickett argues that his counsel failed to inform him in a timely manner of the outcome of his appeal. This failure, Pickett argues, denied him the opportunity to file a timely motion for reconsideration or motion for reopening. However, this court has consistently found that the failure of appellate counsel to communicate with his client does not constitute good cause. *State v. Morgan* (Mar. 16, 1989), Cuyahoga App. No. 55341, reopening disallowed, 2007-Ohio-5532, Motion No. 397723; *State v. Gross*, Cuyahoga App. No. 76836, 2005-Ohio-1664, at 2-5. Pickett's failure to demonstrate good cause is a sufficient basis for denying his application for reopening. *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, Pickett has not met the standard for reopening.

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

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ANN DYKE

CHRISTINE T. MCMONAGLE, P.J., and  
MELODY J. STEWART, J., CONCUR