

[Cite as *State v. Ellis*, 2009-Ohio-2875.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 91116**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**WILLIAM ELLIS**

DEFENDANT-APPELLANT

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**JUDGMENT: APPLICATION DENIED**

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APPLICATION FOR REOPENING  
MOTION NO. 422957  
LOWER COURT NO. CR-498821  
COMMON PLEAS COURT

**RELEASE DATE:** June 16, 2009

**ATTORNEYS FOR PLAINTIFF-APPELLEE**

William D. Mason  
Cuyahoga County Prosecutor

By: Lisa Reitz Williamson  
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**FOR DEFENDANT-APPELLANT**

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P.O. Box 56  
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PATRICIA A. BLACKMON, J.:

{¶ 1} In *State v. Ellis*, Cuyahoga County Court of Common Pleas Case No. CR-498821, applicant, William Ellis, was convicted of felonious assault and criminal damaging. This court affirmed that judgment.<sup>1</sup>

{¶ 2} Ellis has filed with the clerk of this court an application for reopening. He asserts that he was denied the effective assistance of appellate counsel because his appellate counsel did not argue “that appellant’s conviction and sentence for an *attempted* felonious assault violates his right to Equal Protection of Law as guaranteed by Article II, Section 26, Ohio Constitution as well as the Due Process

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<sup>1</sup> *State v. Ellis*, Cuyahoga App. No. 91116, 2009-Ohio-852.

Clause of the United States Constitution.” Complaint, at 1. (Emphasis added.) We deny the application for reopening. The reasons for our denial follow.<sup>2</sup>

{¶ 3} "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."<sup>3</sup> Additionally, an application for reopening must include "a showing of good cause for untimely filing if the application is filed more than ninety days after journalization of the appellate judgment."<sup>4</sup>

{¶ 4} This court's decision affirming applicant's conviction was journalized on March 9, 2009. The application was filed on Tuesday, June 9, 2009, 92 days after journalization and in excess of the ninety-day limit.<sup>5</sup> “That is, the application was due 91 days after the journalization of this court’s journal entry and opinion in applicant’s direct appeal, but [applicant] did not file the application until 92 days after the

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<sup>2</sup> App.R. 26(B)(6).

<sup>3</sup> App.R. 26(B)(1).

<sup>4</sup> App.R. 26(B)(2)(b).

<sup>5</sup>

Days	Month
22	March
30	April
31	May
9	June
92	TOTAL

Sunday, June 7, 2009, was the ninetieth day. Monday, June 8, 2009, was the last day on which a timely application could have been filed because the ninetieth day was a Sunday. App.R. 14(A).

journalization of this court's decision affirming his conviction. 'Compare: *State v. Agosto*, Cuyahoga App. No. 87283, 2006 Ohio 5011, reopening disallowed, 2007 Ohio 848 (91 days); *State v. Peyton*, Cuyahoga App. No. 86797, 2006 Ohio 3951, reopening disallowed, 2007 Ohio 263 (93 days); *State v. Lowe*, Cuyahoga App. No. 82997, 2004 Ohio 4622, reopening disallowed, 2005 Ohio 5986 (91 days). Cf. *State v. Woodard* (Apr. 23, 1992), Cuyahoga App. No. 61171, 1992 Ohio App. LEXIS 2083, reopening disallowed (Sept. 18, 2001), Motion No. 23121 (91 days after appointment of counsel).' *State v. Burnett*, Cuyahoga App. No. 87506, 2007-Ohio-284, reopening disallowed, 2007-Ohio-4434, at ¶4 (98 days)."<sup>6</sup>

{¶ 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."<sup>7</sup> We need not, therefore, examine the merits of this application if Ellis has failed to demonstrate good cause for failing to file a timely application.

{¶ 6} Ellis has made no attempt to argue that there is good cause for the untimely filing of the application. His failure to demonstrate good cause is a

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<sup>6</sup> *State v. Lewis*, Cuyahoga App. Nos. 88627, 88628 and 88629, 2007-Ohio-3640, reopening disallowed, 2008-Ohio-679, at ¶4 (92 days), quoted with approval in *State v. Dunbar*, Cuyahoga App. No. 89711, 2008-Ohio-1628, reopening disallowed, 2008-Ohio-3977, at ¶4 (92 days).

<sup>7</sup> 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.

sufficient basis for denying the application for reopening.<sup>8</sup> As a consequence, Ellis has not met the standard for reopening.

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

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PATRICIA A. BLACKMON, JUDGE

KENNETH A. ROCCO, P.J., and  
JAMES J. SWEENEY, J., CONCUR

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<sup>8</sup> *Cleveland v. Melton* (June 18, 2008), Cuyahoga App. No. 91048, reopening disallowed, 2009-Ohio-1070 (direct appeal dismissed as moot).