

[Cite as *State v. Bennett*, 2009-Ohio-343.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 90815**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**COLLINS J. BENNETT, JR.**

DEFENDANT-APPELLANT

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**JUDGMENT: APPLICATION DENIED**

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APPLICATION FOR REOPENING  
MOTION NO. 414486  
LOWER COURT NO. CR-482881  
COMMON PLEAS COURT

**RELEASE DATE:** January 26, 2009

**ATTORNEYS FOR PLAINTIFF-APPELLEE**

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Cuyahoga County Prosecutor

By: T. Allan Regas  
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**FOR DEFENDANT-APPELLANT**

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MELODY J. STEWART, J.:

{¶ 1} Collins J. Bennett, Jr. has filed an application for reopening pursuant to App.R. 26(B). Bennett is attempting to revisit the appellate judgment rendered by this court in *State v. Bennett* (Jan. 14, 2008), Cuyahoga App. No. 90815, which denied his pro se motion for leave to file a delayed appeal. For the following reasons, we are prevented from granting Bennett's application.

{¶ 2} Initially, we find that App.R. 26(B) is not applicable to the facts pertinent to Bennett's appeal. No appellate judgment, which reviewed Bennett's plea of guilty to four counts of involuntary manslaughter, has been announced and journalized by

this court. Thus, we are prevented from considering Bennett's application for reopening brought pursuant to App.R. 26(B). *State v. Skaggs* (May 12, 1999), Cuyahoga App. No. 76301, reopening disallowed (Sept. 21, 1999), Motion No. 7505. See, also, *State v. Loomer*, 76 Ohio St.3d 398, 1996-Ohio-59, 667 N.E.2d 1209; *State v. Halliwell* (Jan 29, 1999), Cuyahoga App. No. 70369, reopening disallowed (Jan 29, 1999), Motion No. 00187; *State v. Fields* (Feb. 29, 1996), Cuyahoga App. No. 68906, reopening disallowed (Sep. 5, 1997), Motion No. 84867; *State v. Williams* (Oct. 31, 1996), Cuyahoga App. No. 69936, reopening disallowed (May 7, 1997), Motion No. 82993.

{¶ 3} In addition, an application for reopening may be granted by this court only upon a showing that there exists a genuine issue as to whether the applicant was deprived of the effective assistance of appellate counsel on appeal. See App.R. 26(B)(5). No appellate counsel was involved in the underlying appeal, since Bennett filed a motion for a delayed appeal, pro se. Thus, Bennett cannot establish a claim of ineffective assistance of appellate counsel. *State v. McCauley*, Cuyahoga App. No. 81328, 2005-Ohio-6093. Bennett is also precluded from arguing his own ineffectiveness on appeal vis-a-vis his pro se representation. *State v. Boone* (1996), 114 Ohio App.3d 275, 683 N.E.2d 67; *State v. Smith* (Nov. 29, 2001), Cuyahoga App. No. 79292, reopening disallowed (Mar. 8, 2002), Motion No. 36058; *State v. Bobo* (Jan. 16, 1996), Cuyahoga App. No. 60013, reopening disallowed (Apr. 10, 1996), Motion No. 69762.

{¶ 4} Accordingly, we deny the application for reopening.

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MELODY J. STEWART, JUDGE

CHRISTINE T. MCMONAGLE, P.J., and  
MARY J. BOYLE, J., CONCUR