

[Cite as *State v. Gray*, 2009-Ohio-4360.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 90981

STATE OF OHIO

APPELLEE

vs.

LARRY GRAY

APPELLANT

**JUDGMENT:
APPLICATION DENIED**

APPLICATION FOR REOPENING
MOTION NO. 425143
CUYAHOGA COUNTY COMMON
PLEAS COURT NO. CR-487147

RELEASE DATE: August 25, 2009

ATTORNEY FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

FOR APPELLANT

Larry Gray, pro se
#541-636
Trumbull Correctional Inst
P.O. Box 901
Leavittsburg, Ohio 44430

LARRY A. JONES, J.:

{¶ 1} On August 11, 2009, Larry Gray 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. Gray*, Cuyahoga App. No. 90981, 2009-Ohio-1782. In that opinion, we affirmed Gray's conviction for aggravated murder. For the following reason, we decline to reopen Gray'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 Gray's conviction was journalized on May 11, 2009. Gray, however, did not file his application for reopening until August 11, 2009, in excess of the ninety-day limit. ¹

{¶ 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. Similarly, this court has also denied applications to reopen when the application was untimely filed and the appellant failed to demonstrate good cause. See *State v. Ellis*, Cuyahoga App. No. 91116, 2009-Ohio-852, reopening disallowed, 2009-Ohio-2875 (92 days); *State v. Burnett*, Cuyahoga App. No. 87506, 2007-Ohio-284, reopening disallowed, 2007-Ohio-4434 (98 days); *State v. Agosto*, Cuyahoga App. No. 87283, 2006-Ohio-5011, reopening disallowed, 2007-Ohio-848 (91 days); *State v. Peyton*, Cuyahoga App. No. 86797,

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Days	Month
20	May
30	June
31	July
11	August
92	TOTAL

2006-Ohio-3951, reopening disallowed, 2007-Ohio-263 (93 days); and *State v. Lowe*, Cuyahoga App. No. 82997, 2004-Ohio-4622, reopening disallowed, 2005-Ohio-5986 (91 days). We need not, therefore, examine the merits of this application if Gray failed to demonstrate good cause for failing to file a timely application.

{¶ 5} In his application, Gray made no attempt to argue that there is good cause to accept his untimely filing. Gray'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, Gray has not met the standard for reopening.

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

LARRY A. JONES, JUDGE

MARY EILEEN KILBANE, P.J., and
CHRISTINE T. MCMONAGLE, J., CONCUR