

[Cite as *State v. McNeal*, 2009-Ohio-6453.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91507

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TANYA MCNEAL

DEFENDANT-APPELLANT

**JUDGMENT:
APPLICATION DENIED**

Application for Reopening
Motion No. 428494
Cuyahoga County Common Pleas Court
Case No. CR-500391

RELEASE DATE: December 7, 2009

FOR APPELLANT

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MARY J. BOYLE, J.:

{¶ 1} On November 18, 2009, Tanya McNeal filed an application for reopening pursuant to App.R. 26(B). She is attempting to reopen the appellate judgment that was rendered by this court in *State v. McNeal*, Cuyahoga App. No. 91507, 2009-Ohio-3888. In that opinion, we affirmed McNeal's convictions for drug possession and drug trafficking. For the following reason, we decline to reopen McNeal'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 McNeal's conviction was journalized on August 17, 2009. McNeal failed to file her application for reopening until November 18, 2009, beyond the 90-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,

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MONTH	DAYS
AUGUST	14
SEPTEMBER	30
OCTOBER	31
NOVEMBER	18
TOTAL	93

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); 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 McNeal failed to demonstrate good cause for failing to file a timely application.

{¶ 5} In her application, McNeal made no attempt to argue that there is good cause to accept her untimely filing. McNeal's failure to demonstrate good cause is a sufficient basis for denying her 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, McNeal has not met the standard for reopening.

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

MARY J. BOYLE, JUDGE

COLLEEN CONWAY COONEY, A.J., and
PATRICIA A. BLACKMON, J., CONCUR