

[Cite as *State v. Rose*, 2010-Ohio-4665.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 89457

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

GREGORY ROSE

DEFENDANT-APPELLANT

**JUDGMENT:
APPLICATION DENIED**

Application for Reopening
Motion No. 437151
Cuyahoga County Common Pleas Court
Case No. CR-480475

RELEASE DATE: September 29, 2010

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KENNETH A. ROCCO, P.J.:

{¶ 1} Gregory Rose has filed an application for reopening pursuant to App.R. 26(B). Rose is attempting to reopen the appellate judgment, rendered in *State v. Rose*, Cuyahoga App. No. 89457, 2008-Ohio-1263, which affirmed his conviction for two counts of felonious assault against police officers and one count of having weapons while under disability. We decline to reopen Rose’s appeal.

{¶ 2} App.R. 26(B)(2)(b) requires that Rose establish “a showing of good cause for untimely filing if the application is filed more than 90 days after

journalization of the appellate judgment,” which is subject to reopening. The Supreme Court of Ohio, with regard to the 90-day deadline provided by App.R. 26(B)(2)(b), has firmly established that:

{¶ 3} “We now reject [applicant’s] claim that those excuses gave him good cause to miss the 90-day deadline in App.R. 26(B). The rule was amended to include the 90-day deadline more than seven months before [applicant’s] appeal of right was decided by the court of appeals in February 1994, so the rule was firmly established then, just as it is today. *Consistent enforcement of the rule’s deadline by the appellate courts in Ohio protects on the one hand the state’s legitimate interest in the finality of its judgments and ensures on the other hand that any claims of ineffective assistance of appellate counsel are promptly examined and resolved.*

{¶ 4} “Ohio and other states ‘may erect reasonable procedural requirements for triggering the right to an adjudication,’ *Logan v. Zimmerman Brush Co.* (1982), 455 U.S. 422, 437, 102 S.Ct. 1148, 71 L.Ed. 2d 265, and that is what Ohio has done by creating a 90-day deadline for the filing of applications to reopen. [Applicant] could have retained new attorneys after the court of appeals issued its decision in 1994, or he could have filed the application on his own. What he could not do was ignore the rule’s filing deadline. * * * *The 90-day requirement in the rule is ‘applicable to all appellants,’ State v. Winstead* (1996), 74 Ohio St.3d 277, 278, 658 N.E.2d 722, and *Gumm* offers no sound reason why

he — unlike so many other Ohio criminal defendants — could not comply with that fundamental aspect of the rule.” (Emphasis added.) *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, at ¶7. See, also, *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970; *State v. Cooley*, 73 Ohio St.3d 411, 1995-Ohio-328, 653 N.E.2d 252; *State v. Reddick*, 72 Ohio St.3d 88, 1995-Ohio-249, 647 N.E.2d 784.

{¶ 5} Herein, Rose is attempting to reopen the appellate judgment that was journalized on March 20, 2008. The application for reopening was not filed until September 2, 2010, more than 90 days after journalization of the appellate judgment in *State v. Rose*, supra. Rose, in an attempt to show “good cause” for the untimely filing of his application for reopening, argues “[b]ecause he was not represented by an attorney after his appeal was denied, he had no knowledge that his appellate counsel had been ineffective and no knowledge that a 26(B) motion was a remedy available to him.” Lack of knowledge or ignorance of the time constraint applicable to an application for reopening per App.R. 26(B), does not provide sufficient cause for untimely filing. *State v. Klein* (Mar. 28, 1991), Cuyahoga App. No. 58389, reopening disallowed (Mar. 15, 1994), Motion No. 249260, affirmed (1994), 69 Ohio St.3d 1481; *State v. Trammell* (July 13, 1995), Cuyahoga App. No. 67834, reopening disallowed (Apr. 22, 1996), Motion No. 270493; *State v. Travis* (Apr. 5, 1990), Cuyahoga App. No. 56825, reopening disallowed (Nov. 2, 1994), Motion No. 251073, affirmed (1995), 72 Ohio St.3d

317. See, also, *State v. Torres*, Cuyahoga App. No. 86530, 2007-Ohio-3696, reopening disallowed (Jan. 3, 2007), Motion No. 390254; *State v. Gaston* (Feb. 7, 2002), Cuyahoga App. No. 79626, reopening disallowed (Jan. 17, 2007), Motion No. 391555. Herein, Rose has failed to establish “a showing of good cause” for the untimely filing of his application for reopening, as premised on a lack of knowledge.

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

KENNETH A. ROCCO, PRESIDING JUDGE

ANN DYKE, J., and
COLLEEN CONWAY COONEY, J., CONCUR