

[Cite as *State v. Wynn*, 2010-Ohio-5469.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93057

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROBERTO WYNN

DEFENDANT-APPELLANT

**JUDGMENT:
APPLICATION DENIED**

Application for Reopening
Motion No. 434986
Cuyahoga County Court of Common Pleas
Case No. CR-510316

RELEASE DATE: November 8, 2010

FOR APPELLANT

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MELODY J. STEWART, P.J.:

{¶ 1} On June 21, 2010, the applicant, Roberto Wynn, pursuant to App.R. 26(B) and *State v. Murnahan* (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204, applied to reopen this court's judgment in *State v. Roberto Wynn*, Cuyahoga App. No. 93057, 2010-Ohio-519, in which this court affirmed Wynn's convictions and sentences for murder, two counts of attempted murder, and four counts of felonious assault, all with three-year firearm specifications. Wynn alleges that his appellate counsel was ineffective for not raising many meritorious arguments and for not consulting with Wynn during the appeal. On July 21, 2010, the state

of Ohio filed its brief in opposition. For the following reasons, this court denies the application.

{¶ 2} App.R. 26(B)(1) and (2)(b) require applications claiming ineffective assistance of appellate counsel to be filed within 90 days from journalization of the decision unless the applicant shows good cause for filing at a later time. This court journalized its decision in Wynn's appeal on March 1, 2010. Wynn filed his application on June 21, 2010, approximately 110 days later. Thus, his application is untimely.

{¶ 3} Although Wynn asserts that his application is timely, he attached to it a copy of a motion filed in the Supreme Court of Ohio asking for additional time for his "26(B)" because he has had limited access to the law library. Thus, in a favorable light to his pleading, Wynn is endeavoring to show good cause for untimely filing. However, the courts have rejected the claim that limited access to legal materials states good cause for untimely filing. Prison riots, lockdowns, and other library limitations have been rejected as constituting good cause. *State v. Tucker*, 73 Ohio St.3d 152, 1995-Ohio-2; *State v. Kaszas* (Sept. 21, 1998), Cuyahoga App. Nos. 72547 and 72547, reopening disallowed (Aug. 14, 2000), Motion No. 316752; *State v. Hickman* (Apr. 30, 1998), Cuyahoga App. No. 72341, reopening disallowed (Dec. 13, 2000), Motion No. 320830 and *State v. Turner* (Nov. 16, 1989), Cuyahoga App. No. 55960, reopening disallowed (Aug. 20, 2001), Motion No. 323221. Moreover, the Supreme Court of Ohio in *State v. Lamar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970, and *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, held that the

90-day deadline for filing must be strictly enforced. The Court reaffirmed the principle that lack of effort, imagination, and ignorance of the law do not establish good cause for not complying with this fundamental aspect of the rule. Untimeliness alone is sufficient to dismiss the application.

{¶ 4} Accordingly, this court denies the application to reopen.

MELODY J. STEWART, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
LARRY A. JONES, J., CONCUR