

[Cite as *State v. West*, 2010-Ohio-5576.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92508

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DeCHARLES WEST

DEFENDANT-APPELLANT

**JUDGMENT:
APPLICATION DENIED**

Cuyahoga County Common Pleas Court
Case No. CR-508353
Application for Reopening
Motion No. 438624

RELEASE DATE: November 15, 2010

FOR APPELLANT

Decharles West, pro se
Inmate No. 560-446
Belmont Correctional Institution
P.O. Box 540
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ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

By: James Hofelich
Assistant County Prosecutor
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MARY J. BOYLE, J.:

On October 22, 2010, the applicant, DeCharles West, pursuant to App.R. 26(B), applied to reopen this court's judgment in *State v. DeCharles West*, Cuyahoga App. No. 92508, 2009-Ohio-6217, in which this court affirmed West's conviction for having a weapon while under disability; West conceded his conviction for domestic violence. West maintains that his appellate counsel was ineffective for not arguing speedy trial rights. For the following reasons, this court denies the application.

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. In the present case, this court journalized its decision on November 25, 2009, and West did not file his application until October 22, 2010. Thus, the application is untimely on its face.

In an effort to show good cause, West argues that his appellate attorney did not inform him of this court's decision. West claims he learned of the decision on September 30, 2010, when he went to the prison's law library and asked the law clerk to look up his case. Thus, West claims he timely filed the application from the date he learned of this court's decision.

However, this court has consistently ruled that the failure of appellate counsel to notify the applicant of the court's decision or the applicant's ignorance of the decision does not state good cause for untimely filing. In *State v. Robert Plaza*, Cuyahoga App. No. 83074, 2004-Ohio-3117, reopening disallowed 2005-Ohio-5685, this court rejected this exact argument. See, also, *State v. Tanisha Jenkins*, (Feb. 10, 2000), Cuyahoga App. No. 75343, reopening disallowed 2006-Ohio-4583 (applicant received paper work late); *State v. Richard Blake* (Feb. 22, 1996), Cuyahoga App. No. 68348, reopening disallowed (Sept. 2, 1997), and *State v. Richard Fears*, Cuyahoga App. No. 89989, 2008-Ohio-2661, reopening disallowed 2008-Ohio-5342. Cf. *State v. James Tomlinson*, Cuyahoga

App. No. 83411, 2004-Ohio-3295, reopening disallowed 2005-Ohio-5844 (good cause not shown when appellate counsel did not inform applicant that the Supreme Court of Ohio had declined to accept his case until four months after the fact).

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. Simple neglect by the applicant to pay attention to App.R. 26(B) is not good cause for missing the filing deadline. The Court then stated 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.

Accordingly, this court denies the application.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR