

[Cite as *State v. Stadmire*, 2011-Ohio-921.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 88735

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RICHARD STADMIRE

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Common Pleas Court
Case No. CR-461538
Application for Reopening
Motion No. 441663

RELEASE DATE: March 1, 2011

FOR APPELLANT

Richard L. Stadmire
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ATTORNEYS FOR APPELLEE

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MARY J. BOYLE, P.J.:

{¶ 1} On February 7, 2011, the applicant, Richard Stadmire, 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. Stadmire*, Cuyahoga App. No. 88735, 2007-Ohio-3644, appeal not allowed, 116 Ohio St.3d 1458, 2007-Ohio-6803, 878 N.E.2d 34, in which this court affirmed Stadmire’s convictions and sentences for aggravated robbery, kidnapping, and two counts of rape, all with three-year firearm specifications. Stadmire asserts that his appellate counsel was ineffective for failing to argue defective indictments, violation of speedy trial, and the ineffectiveness of trial counsel in failing to investigate and call witnesses. For the following reasons, this court denies the application, sua sponte.

{¶ 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. In the present case, this court journalized its opinion on July 19, 2007. Thus, Stadmire’s February 7, 2011 application is untimely by more than three years.

{¶ 3} In an effort to establish good cause, Stadmire argues that he was “not able to file his appeal in a timely fashion, because appella[nt]’s counsel has just removed [himself] from the case as of Nov. 29, 2010, so therefore, the appella[nt] wasn’t able to file within the

required time period.” (Section II of the application.) However, the Supreme Court of Ohio addressed this specific excuse 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. In these cases the applicants argued that after the court of appeals decided their cases, their appellate counsels continued to represent them, and their appellate counsels could not be expected to raise their own incompetence. Although the Supreme Court of Ohio agreed with this latter principle, it rejected the argument that continued representation provided good cause. In both cases, the court ruled that the applicants could not ignore the 90-day deadline, even if it meant retaining new counsel or filing the applications themselves. The court then reaffirmed the principle that lack of effort, imagination, and ignorance of the law do not establish good cause for complying with this fundamental aspect of the rule. The 90-day limitation period must be strictly enforced. This is especially true in Stadmire’s case because he had expressed dissatisfaction with his appellate counsel’s arguments throughout the process and urged that other arguments be made. Thus, Stadmire’s misplaced reliance on his appellate counsel does not state good cause.

{¶ 4} A review of the application itself establishes that Stadmire has exceeded the ten-page limitation established by App.R. 26(B)(4). This defect provides another independent reason for dismissing the application. *State v. Graham* (June 1, 1975), Cuyahoga App. No. 33350, reopening disallowed (July 21, 1994), Motion No. 252743; *State*

v. Schmidt (Dec. 5, 1991), Cuyahoga App. No. 57738, reopening disallowed (Aug. 10, 1994), Motion No. 142174; *State v. Peebles* (Dec. 22, 1988), Cuyahoga App. No. 54708, reopening disallowed (Aug. 24, 1994), Motion No. 254080, affirmed (1994), 71 Ohio St.2d 349, 643 N.E.2d 1112; and *State v. Caldwell*, Cuyahoga App. No. 44360, 2002-Ohio-2751.

{¶ 5} Accordingly, this application to reopen is denied.

MARY J. BOYLE, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
COLLEEN CONWAY COONEY, J., CONCUR