

[Cite as *State v. Johnson*, 2013-Ohio-4590.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 97327

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ZANE JOHNSON

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-543503
Application for Reopening
Motion No. 468476

RELEASE DATE: October 11, 2013

FOR APPELLANT

Zane Johnson, pro se
Inmate No. 603-209
Toledo Correctional Institution
2001 East Central Avenue
Toledo, Ohio 43608

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: Kevin R. Filiatraut
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., P.J.:

{¶1} Zane Johnson has filed an application for reopening pursuant to App.R. 26(B). Johnson is attempting to reopen the appellate judgment, as rendered in *State v. Johnson*, 8th Dist. Cuyahoga No. 97327, 2012-Ohio-2764, which affirmed his conviction for the offense of aggravated murder with a three-year firearm specification. We decline to reopen Johnson's appeal.

{¶2} App.R. 26(B)(2)(b) requires that Johnson establish "a showing of good cause for untimely filing if the application is filed more than 90 days after journalization of the appellate judgment" that 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 recently established:

We now reject [the applicant's] claim that those excuses gave him good cause to miss the 90-day deadline in App.R. 26(B). * * * 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.

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. * * * 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 [the applicant] offers no sound reason why he — unlike so many other Ohio criminal defendants — could not comply with that fundamental aspect of the rule.

State v. Gumm, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 7-8. *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, 653 N.E.2d 252 (1995); *State v. Reddick*, 72 Ohio St.3d 88, 647 N.E.2d 784 (1995).

{¶3} Herein, Johnson is attempting to reopen the appellate judgment that was journalized on June 21, 2012. The application for reopening was not filed until September 19, 2013; more than 90 days after journalization of the appellate judgment in *State v. Johnson, supra*. Johnson has failed to establish “a showing of good cause” for the untimely filing of his application for reopening. *State v. Klein*, 8th Dist. Cuyahoga No. 58389, 1991 Ohio App. LEXIS 1346 (Mar. 28, 1991), *reopening disallowed* (Mar. 15, 1994), Motion No. 249260, *aff’d*, 69 Ohio St.3d 1481, 634 N.E.2d 1027 (1994); *State v. Trammell*, 8th Dist. Cuyahoga No. 67834, 1995 Ohio App. LEXIS 2962 (July 13, 1995), *reopening disallowed* (Apr. 22, 1996), Motion No. 270493; *State v. Travis*, 8th Dist. Cuyahoga No. 56825, 1990 Ohio App. LEXIS 1356 (Apr. 5, 1990), *reopening disallowed* (Nov. 2, 1994), Motion No. 251073, *aff’d*, 72 Ohio St.3d 317, 649 N.E.2d 1226 (1995). *See also State v. Gaston*, 8th Dist. Cuyahoga No. 79626, 2007-Ohio-155; *State v. Torres*, 8th Dist. Cuyahoga No. 86530, 2007-Ohio-9.

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

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

KENNETH A. ROCCO, J., and
EILEEN A. GALLAGHER, J., CONCUR