

[Cite as *State v. Miller*, 2015-Ohio-1535.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 100461

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LEELIN MILLER

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-13-572533
Application for Reopening
Motion No. 481000

RELEASE DATE: April 22, 2015

FOR APPELLANT

Leelin J. Miller, pro se
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ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Eric L. Foster
Assistant County Prosecutor
Justice Center
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MARY J. BOYLE, J.:

{¶1} On December 11, 2014, the applicant, Leelin Miller, pursuant to App.R. 26(B), applied to reopen this court's judgment in *State v. Miller*, 8th Dist. Cuyahoga No. 100461, 2014-Ohio-3907, in which this court affirmed Miller's convictions and sentences for aggravated murder, murder, felonious assault, aggravated robbery, kidnapping, grand theft, and having a weapon while under disability, but remanded the case to the trial court to incorporate into the sentencing entry the reasons for imposing consecutive sentences. Miller argues that his appellate counsel was ineffective for not arguing prosecutorial misconduct, ineffective assistance of trial counsel, and error in overruling defense counsel's objections. On February 2, 2015, the state of Ohio, through the Cuyahoga County prosecutor, filed its brief in opposition to the application to reopen. 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 issued its decision on September 11, 2014, and Miller filed his application one day late on December 11, 2014. Nineteen (remaining days in September) plus 31 (October) plus 30 (November) plus 11 (December) equals 91. Thus, this application is untimely. Miller did not proffer any explanation to show good cause.

{¶3} 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. In those cases, the applicants argued that after the court of appeals decided their cases, their appellate attorneys continued to represent them, and their appellate attorneys could not be expected to raise their own incompetence. Although the Supreme Court 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. As a corollary, miscalculation of the time needed for mailing would also not state good cause. *State v. Agosto*, 8th Dist. Cuyahoga No. 87283, 2006-Ohio-5011, *reopening disallowed*, 2007-Ohio-848; *State v. Ellis*, 8th Dist. Cuyahoga No. 91116, 2009-Ohio-852, *reopening disallowed*, 2009-Ohio-2875; *State v. Peyton*, 8th Dist. Cuyahoga No. 86797, 2006-Ohio-3951, *reopening disallowed*, 2007-Ohio-263, App.R. 26(B) application to reopen denied as untimely because it was filed two days late.

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

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
EILEEN T. GALLAGHER, J., CONCUR