

[Cite as *State v. Smith*, 2015-Ohio-2949.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 101105

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**SANCHEZ SMITH**

DEFENDANT-APPELLANT

---

**JUDGMENT:**  
APPLICATION DENIED

---

Cuyahoga County Court of Common Pleas  
Case No. CR-10-535173-B  
Application for Reopening  
Motion No. 484709

**RELEASE DATE:** July 20, 2015

**FOR APPELLANT**

Sanchez Smith, pro se  
Inmate No. 592-327  
Toledo Correctional Institution  
2001 East Central Avenue  
Toledo, OH 43608

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor

By: Daniel T. Van  
Assistant County Prosecutor  
Justice Center, 8th Floor  
1200 Ontario Street  
Cleveland, OH 44113

TIM McCORMACK, J.:

{¶1} Sanchez Smith has filed an application for reopening pursuant to App.R. 26(B). Smith is attempting to reopen the appellate judgment rendered in *State v. Smith*, 8th Dist. Cuyahoga No. 101105, 2014-Ohio-5547, which affirmed his sentences for the offenses of aggravated burglary, aggravated robbery, having a weapon while under disability, aggravated theft, and attendant firearm specifications. We decline to reopen Smith’s appeal.

{¶2} App.R. 26(B)(2)(b) requires that Smith establish “a showing of good cause for untimely filing if the application is filed more than 90 days after journalization of the appellate judgment,” which is subject to reopening. The Supreme Court of Ohio, with regard to the 90-day deadline as provided by App.R. 26(B)(2)(b), has established that:

We now reject [the applicant’s] claims that those excuses <sup>[1]</sup> gave [the applicant] 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. \* \* \*

---

<sup>1</sup>The applicant in *Gumm* argued that good cause existed for an untimely application based on his lack of legal experience and financial resources and because the same attorney represented him in the trial court and on appeal.

The 90-day requirement in the rule is applicable to all appellants, *State v. Winstead* (1996), 74 Ohio St.3d 277, 278, 1996 Ohio 52, 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, 10. *See also State v. Lamar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970; *State v. Coeey*, 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} Smith acknowledges that his application is untimely. However, he argues that “good cause” for his untimely filing is established by his limited access to the prison law library. The courts, however, have repeatedly rejected the claim that limited access to a law library and legal materials states good cause for untimely filing. Prison riots, lockdowns, and other library limitations have also been rejected as constituting good cause. *State v. Tucker*, 73 Ohio St.3d 152, 652 N.E.2d 720 (1995); *State v. Kaszas*, 8th Dist. Cuyahoga Nos. 72546 and 72547, 1998 Ohio App. LEXIS 4227 (Sept. 10, 1998), *reopening disallowed*, 2000 Ohio App. LEXIS 3755 (Aug. 14, 2000); *State v. Hickman*, 8th Dist. Cuyahoga No. 72341, 1998 Ohio App. LEXIS 1893 (Apr. 30, 1998), *reopening disallowed*, 2000 Ohio App. LEXIS 6079 (Dec. 13, 2000), and *State v. Turner*, 8th Dist. Cuyahoga No. 55960, 1989 WL 139488 (Nov. 16, 1989), *reopening disallowed*, 2001 Ohio App. LEXIS 3774 (Aug. 20, 2001).

{¶4} Smith 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 (March 28, 1991), *reopening disallowed* (Mar. 15, 1994), Motion No. 49260, *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. 70493; *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.

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

TIM McCORMACK, JUDGE

KATHLEEN ANN KEOUGH, P.J., and  
EILEEN T. GALLAGHER, J., CONCUR