

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 111562  
 v. :  
 :  
 ERIC HEAD, :  
 :  
 Defendant-Appellant. :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: APPLICATION DENIED**  
**RELEASED AND JOURNALIZED: September 11, 2023**

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Cuyahoga County Court of Common Pleas  
Case No. CR-19-645614-A  
Application for Reopening  
Motion No. 566502

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Alicia Harrison, Assistant Prosecuting Attorney, *for appellee*.

Eric Head, *pro se*.

MICHELLE J. SHEEHAN, J.:

{¶ 1} On July 31, 2023, the applicant, Eric Head, pursuant to App.R. 26(B), applied to reopen this court's judgment in *State v. Head*, 8th Dist. Cuyahoga No. 111562, 2023-Ohio-1364, in which this court affirmed his convictions and

sentences for aggravated murder, felonious assault, and aggravated burglary. Head maintains that his appellate counsel was ineffective for not arguing the following: (1) trial counsel was ineffective for not seeking an instruction on voluntary manslaughter, (2) trial counsel was ineffective for not seeking a plea bargain for voluntary manslaughter, and (3) a life sentence without parole violated the Eighth Amendment protection against cruel and unusual punishment. Although the state of Ohio has not filed a response, 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 decisions unless the applicant shows good cause for filing at a later time. In the instant case, this court journalized its decision on April 27, 2023. July 31, 2023, was 95 days after April 27, 2023 — 3 (remaining days in April) + 31 (May) + 30 (June) + 31 (July) = 95. Thus, this application is untimely on its face. Head does 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 counsel continued to represent them and their appellate counsel 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 does 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. Peyton*, 8th Dist. Cuyahoga No. 86797, 2006-Ohio-3951, *reopening disallowed*, 2007-Ohio-263, Motion No. 390683 — 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 as untimely.

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MICHELLE J. SHEEHAN, JUDGE

FRANK DANIEL CELEBREZZE, III, P.J., and  
MICHAEL JOHN RYAN, J., CONCUR