

[Cite as *State v. Demars*, 2006-Ohio-3833.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 62148

STATE OF OHIO :
 : JOURNAL ENTRY
 Plaintiff-Appellee : AND
 : OPINION
 vs. :
 :
 PATRICIA DEMARS :
 :
 Defendant-Appellant :
 :
 :
 DATE OF JOURNALIZATION : JULY 25, 2006
 :
 CHARACTER OF PROCEEDINGS : Application for Reopening,
 : Motion No. 385801
 : Lower Court No. CR-260392
 : Common Pleas Court
 :
 JUDGMENT : APPLICATION DENIED.

APPEARANCES:

For plaintiff-appellee: WILLIAM D. MASON
Cuyahoga County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

For defendant-appellant: PATRICIA DEMARS, pro se
Northeast Pre-Release Center
2675 E. 30th Street, Unit G
Cleveland, Ohio 44115

Judge Mary Eileen Kilbane:

{¶ 1} On July 3, 2006, Patricia Demars filed an application for reopening pursuant to App. R. 26(B). She is attempting to reopen the appellate judgment that was rendered by this court in *State v. Demars*

Demars (Mar. 18, 1993), Cuyahoga App. No. 62148. In that opinion, we affirmed her convictions for two counts of aggravated murder and one count of aggravated arson. Demars appealed our decision to the Supreme Court of Ohio but the Court did not accept the appeal for review. *State v. Demars* (1993), 67 Ohio St.3d 1462, 619 N.E.2d 698. For the following reason, we decline to reopen Demars' appeal:

{¶2} App.R. 26(B)(1) provides, in part: "An application for reopening shall be filed *** within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time." App.R. 26(B)(2)(b) requires that an application for reopening include "a showing of good cause for untimely filing if the application is filed more than ninety days after journalization of the appellate judgment."

{¶3} This court's decision affirming applicant's conviction was journalized on April 5, 1993. Demars failed to file her application for reopening until July 3, 2006, clearly in excess of the ninety-day limit.

{¶4} The Supreme Court has upheld judgments denying applications for reopening solely on the basis that the application was not timely filed and the applicant failed to show "good cause for filing at a later time." App.R. 26(B)(1). See, e.g., *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861; *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970. We need not, therefore, examine the merits of this application if Demars failed to demonstrate

failed to demonstrate good cause for failing to file a timely application.

{¶5} In her application, Demars claims that her application was untimely because of her year-long hospitalization for cancer treatment, and because her transcripts and legal papers were destroyed in a flood. It is well established that lack of transcripts and other records does not constitute good cause. *State v. Hughes*, Cuyahoga App. No. 81678, 2003-Ohio-23, reopening disallowed, 2004-Ohio-5480, Motion No. 357347; *State v. Sanchez* (Jun. 9, 1994), Cuyahoga App. No. 62797, reopening disallowed, 2002-Ohio-2011, Motion No. 36733. We further find that Demars failed to establish that her illness prevented her from filing her application for almost thirteen years.

{¶6} Demars' failure to demonstrate good cause is a sufficient basis for denying her application for reopening. See *State v. Quiles*, Cuyahoga App. No. 84293, 2005-Ohio-388, reopening disallowed, __ - Ohio-__, Motion No. 372157; *State v. Collier* (June 11, 1987), Cuyahoga App. No. 51993, reopening disallowed 2005-Ohio-5797, Motion No. 370333; *State v. Garcia* (July 8, 1999), Cuyahoga App. No. 74427, reopening disallowed 2005-Ohio-5796, Motion No. 370916. As a consequence, applicant has not met the standard for reopening.

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

MARY EILEEN KILBANE _____
JUDGE

SEAN C. GALLAGHER, P.J., CONCURS

CHRISTINE T. MCMONAGLE, J., CONCURS