

[Cite as *State v. Pettway*, 2010-Ohio-235.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91716

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TIMOTHY PETTWAY

DEFENDANT-APPELLANT

**JUDGMENT:
APPLICATION DENIED**

Application for Reopening
Motion No. 429357
Cuyahoga County Common Pleas Court
Case No. CR-498474

RELEASE DATE: January 22, 2010

ATTORNEYS FOR APPELLEE

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MELODY J. STEWART, J.:

{¶ 1} On December 16, 2009, Timothy Pettway filed an application for reopening pursuant to App. R. 26(B). He is attempting to reopen the appellate judgment that was rendered by this court in *State v. Pettway*, Cuyahoga App. No. 91716, 2009-Ohio-4544. In that opinion, we affirmed the defendant's conviction for murder. For the following reasons, we decline to reopen Pettway's original 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 Pettway's conviction was journalized on September 14, 2009. Pettway, however, did not file his application for reopening until December 16, 2009 and in excess of the ninety-day limit. ¹

{¶ 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.

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MONTH	DAYS
SEPTEMBER	16
OCTOBER	31
NOVEMBER	30
DECEMBER	16
TOTAL	93

{¶ 5} Similarly, this court has also denied applications to reopen when the application was untimely filed and the appellant failed to demonstrate good cause. See *State v. Ellis*, Cuyahoga App. No. 91116, 2009-Ohio-852, reopening disallowed, 2009-Ohio-2875 (92 days); *State v. Burnett*, Cuyahoga App. No. 87506, 2007-Ohio-284, reopening disallowed, 2007-Ohio-4434 (98 days); *State v. Agosto*, Cuyahoga App. No. 87283, 2006-Ohio-5011, reopening disallowed, 2007-Ohio-848 (91 days); *State v. Peyton*, Cuyahoga App. No. 86797, 2006-Ohio-3951, reopening disallowed, 2007-Ohio-263 (93 days); and *State v. Lowe*, Cuyahoga App. No. 82997, 2004-Ohio-4622, reopening disallowed, 2005-Ohio-5986 (91 days). We need not, therefore, examine the merits of this application if Pettway failed to demonstrate good cause for failing to file a timely application.

{¶ 6} In his application, Pettway acknowledges that the application is untimely but states that good cause will be demonstrated in his brief. However, Pettway failed to address the issue of good cause within his brief. Consequently, Pettway's failure to demonstrate good cause is a sufficient basis for denying his application for reopening. *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. Therefore, Pettway has not

met the standard for reopening. Accordingly, the application for reopening is denied.

MELODY J. STEWART, JUDGE

KENNETH A. ROCCO, P.J., and
JAMES J. SWEENEY, J., CONCUR