

[Cite as *State v. Humphrey*, 2010-Ohio-58.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 89476

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LEONARD HUMPHREY

DEFENDANT-APPELLANT

**JUDGMENT:
APPLICATION DENIED**

Application for Reopening
Motion No. 428926
Cuyahoga County Common Pleas Court
Case No. CR-478005

RELEASE DATE: January 11, 2010

ATTORNEYS FOR APPELLEE

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ANN DYKE, J.:

{¶ 1} Leonard Humphrey has filed an application for reopening pursuant to App.R. 26(B). Humphrey is attempting to reopen the appellate judgment, as rendered in *State v. Humphrey*, Cuyahoga App. No. 89476, 2008-Ohio-685, which affirmed his conviction for the offenses of aggravated murder, aggravated robbery, and having weapons while under disability. We decline to reopen Humphrey's appeal.

{¶ 2} App.R. 26(B)(2)(b) requires that Humphrey 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 firmly established that:

{¶ 3} “We now reject Gumm’s claim that those excuses gave him good cause to miss the 90-day deadline in App.R. 26(B). The rule was amended to include the 90-day deadline more than seven months before Gumm’s appeal of right was decided by the court of appeals in February 1994, so the rule was firmly established then, just as it is today. **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.**

{¶ 4} “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.** Gumm could have retained new attorneys after the court of appeals issued its decision in 1994, or he could have filed the application on his own. What he could not do was ignore the rule’s filing deadline. * * * **The 90-day requirement in the rule is ‘applicable to all**

appellants,' *State v. Winstead* (1996), 74 Ohio St.3d 277, 278, 658 N.E.2d 722, and Gumm offers no sound reason why he – unlike so many other Ohio criminal defendants – could not comply with that fundamental aspect of the rule.” (Emphasis added.)

{¶ 5} *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, at ¶7.

{¶ 6} See, also, *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970; *State v. Cooley*, 73 Ohio St.3d 411, 1995-Ohio-328, 653 N.E.2d 252; *State v. Reddick*, 72 Ohio St.3d 88, 1995-Ohio-249, 647 N.E.2d 784.

{¶ 7} Herein, Humphrey is attempting to reopen the appellate judgment that was journalized on March 3, 2008. The application for reopening was not filed until December 3, 2009 more than 90 days after journalization of the appellate judgement in *State v. Humphrey*, supra. Lack of knowledge or ignorance of the time constraint, applicable to an application for reopening per App.R. 26(B), does not provide sufficient cause for untimely filing. *State v. Klein* (Mar. 28, 1991), Cuyahoga App. No. 58389, reopening disallowed (Mar. 15, 1994), Motion No. 249260, affirmed (1994), 69 Ohio St.3d 1481; *State v. Trammell* (July 13, 1995), Cuyahoga App. No. 67834, reopening disallowed (Apr. 22, 1996), Motion No. 270493; *State v. Travis* (Apr. 5, 1990), Cuyahoga App. No. 56825, reopening disallowed (Nov. 2, 1994), Motion No. 251073, affirmed (1995), 72 Ohio St.3d 317. See, also, *State v. Torres*, Cuyahoga App.

No. 86530, 2007-Ohio-3696, reopening disallowed (Jan. 3, 2007), Motion No, 390254; *State v. Gaston* (Feb. 7. 2002), Cuyahoga App. No. 79626, reopening disallowed (Jan. 17, 2007), Motion No. 391555. In addition, reliance upon appellate counsel does not establish good cause for untimely filing an application for reopening. *State v. White* (Jan. 31, 1991), Cuyahoga App. No. 57944, reopening disallowed (Oct. 19, 1994), Motion No. 249174; *State v. Allen* (Nov. 3, 1994), Cuyahoga App. No. 65806, reopening disallowed (July 8, 1996), Motion No. 267054. See, also, *State v. Moss* (May 13, 1993), Cuyahoga App. Nos. 62318 and 62322, reopening disallowed (Jan. 16, 1997), Motion No. 275838; *State v. McClain* (Aug. 3, 1995), Cuyahoga App. No. 67785, reopening disallowed (Apr. 15, 1997), Motion No. 276811; *State v. Russell* (May 9, 1996), Cuyahoga App. No. 69311, reopening disallowed (June 16, 1997), Motion No. 282351. Thus, Humphrey has failed to establish “a showing of good cause” for the untimely filing of his application for reopening, as premised upon a lack of knowledge.

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

ANN DYKE, JUDGE

CHRISTINE T. MCMONAGLE, P.J., and
MARY J. BOYLE, J., CONCUR

