

[Cite as *State v. Hudson*, 2010-Ohio-2879.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 91803**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**TONIO HUDSON**

DEFENDANT-APPELLANT

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**JUDGMENT:  
APPLICATION DENIED**

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Application for Reopening  
Motion No. 434149  
Cuyahoga County Common Pleas Court  
Case No. CR-510582

**RELEASE DATE:** June 21, 2010

**FOR APPELLANT**

Tonio Hudson, pro se  
Inmate # A551-480  
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P. O. Box 788  
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**ATTORNEYS FOR APPELLEE**

William D. Mason  
Cuyahoga County Prosecutor

By: Katherine Mullin  
Assistant County Prosecutor  
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KENNETH A. ROCCO, PRESIDING JUDGE:

Tonio Hudson has filed an application for reopening pursuant to App.R. 26(B). Hudson is attempting to reopen the appellate judgment, as rendered in *State v. Hudson*, Cuyahoga App. No. 91803, 2009-Ohio-6454, which affirmed his conviction for the offenses of aggravated murder, murder, and aggravated robbery with firearm specifications, but reversed the sentences imposed and remanded for resentencing. We decline to reopen Hudson's appeal.

App.R. 26(B)(2)(b) requires that Hudson 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:

“We now reject [the applicant’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 [the applicant’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.**

“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. [The applicant] 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.) *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, at ¶7.

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.

Herein, Hudson is attempting to reopen the appellate judgment that was journalized on December 21, 2009. The application for reopening was not filed until May 21, 2010, more than 90 days after journalization of the appellate judgment in *State v. Hudson*, supra. Hudson has attempted to establish “good cause” for the untimely filing of his application for reopening based upon lack of knowledge or ignorance of the 90-day time constraint, reliance upon counsel, unavailability of the transcript, and limited access to legal materials.

Lack of knowledge or ignorance of the 90-day time constraint, that is 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 the untimely filing of 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. Finally, difficulty in obtaining a transcript or limited access to legal materials does not establish good cause for the untimely filing of an application for reopening. *State v. Houston*, 73 Ohio St.3d 346, 1995-Ohio-317, 652 N.E.2d 1018; *State v. Lawson*, Cuyahoga App. No. 84402, 2005-Ohio-880, reopening disallowed 2006-Ohio-3939, Motion No. 374913; *State v. Alexander*, Cuyahoga App. No. 81529, 2004-Ohio-3861, reopening disallowed 2004-Ohio-3861, Motion No. 353061; and *State v. Sanchez*

(June 9, 1994), Cuyahoga App. No. 62796, reopening disallowed (Aug. 16, 2001), Motion No. 323717. Herein, Hudson 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, reliance upon his attorney, difficulty in obtaining a transcript, and limited access to legal materials.

Accordingly, the application for reopening is denied.

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**KENNETH A. ROCCO, PRESIDING JUDGE**

**MARY J. BOYLE, J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR**