

[Cite as *State v. Woody*, 2010-Ohio-3307.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92929

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

MIKE WOODY

DEFENDANT-APPELLANT

**JUDGMENT:
APPLICATION DENIED**

Application for Reopening
Motion No. 433325
Cuyahoga County Common Pleas Court
Case No. CR-478107

RELEASE DATE: July 13, 2010

ATTORNEYS FOR APPELLANT

Robert A. Dixon
The Brownhoist Building
4403 St. Clair Avenue
Cleveland, Ohio 44103

Thomas J. Escovar
Steuer, Escovar, Berk & Brown Co.
55 Public Square, Suite 1475
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

By: Mary McGrath
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Mike Woody has filed a timely application for reopening pursuant to App.R. 26(B). Woody is attempting to reopen the appellate judgment, as journalized in *State v. Woody*, Cuyahoga App. No. 92929, 2010-Ohio-72, which affirmed the denial of his motion to withdraw the plea of guilty as entered to the offenses of involuntary manslaughter and felonious assault in *State v.*

Woody, Cuyahoga County Court of Common Pleas Case No. CR-478107. We decline to reopen *Woody's* appeal.

{¶ 2} The appeal, which forms the basis of *Woody's* application for reopening, concerned a post-conviction motion. Specifically, *Woody's* appeal involved an appeal from the denial of his motion to vacate the plea of guilty as entered to the offenses of involuntary manslaughter and felonious assault. An application for reopening, as brought pursuant to App.R. 26(B), can only be employed to reopen an appeal from the judgment of conviction and sentence, based upon a claim of ineffective assistance of appellate counsel. See *State v. Loomer*, 76 Ohio St.3d 398, 1996-Ohio-59, 667 N.E.2d 1209. See, also, *State v. Halliwell* (Dec. 30, 1996), Cuyahoga App. No. 70369, reopening disallowed (Jan. 28, 1999), Motion No. 300187; *State v. White* (Jan. 7, 2002), Cuyahoga App. No. 78190, reopening disallowed (May 13, 2004), Motion No. 357536; *State v. Shurney* (Mar. 10, 1994), Cuyahoga App. No. 64670, reopening disallowed (May 15, 1995), Motion No. 260758. Since App.R. 26(B) applies only to the direct appeal of a criminal conviction, it cannot now be employed to challenge the appeal that dealt with the denial of *Woody's* motion to vacate guilty plea.

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

FRANK D. CELEBREZZE, JR., JUDGE

CHRISTINE T. McMONAGLE, P.J., and
MELODY J. STEWART, J., CONCUR