

[Cite as *State v. West*, 2010-Ohio-5576.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 92508**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**DeCHARLES WEST**

DEFENDANT-APPELLANT

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**JUDGMENT:  
APPLICATION DENIED**

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Cuyahoga County Common Pleas Court  
Case No. CR-508353  
Application for Reopening  
Motion No. 438624

**RELEASE DATE:** November 15, 2010

**FOR APPELLANT**

DeCharles West, pro se  
Inmate No. 560-446  
Belmont Correctional Institution  
P.O. Box 540  
St. Clairsville, Ohio 43950-0540

**ATTORNEYS FOR APPELLEE**

William D. Mason  
Cuyahoga County Prosecutor

By: James Hofelich  
Assistant County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
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MARY J. BOYLE, J.:

On October 22, 2010, the applicant, DeCharles West, pursuant to App.R. 26(B), applied to reopen this court's judgment in *State v. DeCharles West*, Cuyahoga App. No. 92508, 2009-Ohio-6217, in which this court affirmed West's conviction for having a weapon while under disability; West conceded his conviction for domestic violence. West maintains that his appellate counsel was ineffective for not arguing speedy trial rights. For the following reasons, this court denies the application.

App.R. 26(B)(1) and (2)(b) require applications claiming ineffective assistance of appellate counsel to be filed within 90 days from journalization of the decision unless the applicant shows good cause for filing at a later time. In the present case, this court journalized its decision on November 25, 2009, and West did not file his application until October 22, 2010. Thus, the application is untimely on its face.

In an effort to show good cause, West argues that his appellate attorney did not inform him of this court's decision. West claims he learned of the decision on September 30, 2010, when he went to the prison's law library and asked the law clerk to look up his case. Thus, West claims he timely filed the application from the date he learned of this court's decision.

However, this court has consistently ruled that the failure of appellate counsel to notify the applicant of the court's decision or the applicant's ignorance of the decision does not state good cause for untimely filing. In *State v. Robert Plaza*, Cuyahoga App. No. 83074, 2004-Ohio-3117, reopening disallowed 2005-Ohio-5685, this court rejected this exact argument. See, also, *State v. Tanisha Jenkins*, (Feb. 10, 2000), Cuyahoga App. No. 75343, reopening disallowed 2006-Ohio-4583 (applicant received paper work late); *State v. Richard Blake* (Feb. 22, 1996), Cuyahoga App. No. 68348, reopening disallowed (Sept. 2, 1997), and *State v. Richard Fears*, Cuyahoga App. No. 89989, 2008-Ohio-2661, reopening disallowed 2008-Ohio-5342. Cf. *State v. James Tomlinson*, Cuyahoga

App. No. 83411, 2004-Ohio-3295, reopening disallowed 2005-Ohio-5844 (good cause not shown when appellate counsel did not inform applicant that the Supreme Court of Ohio had declined to accept his case until four months after the fact).

Moreover, the Supreme Court of Ohio in *State v. Lamar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970, and *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, held that the 90-day deadline for filing must be strictly enforced. Simple neglect by the applicant to pay attention to App.R. 26(B) is not good cause for missing the filing deadline. The Court then stated that lack of effort, imagination, and ignorance of the law do not establish good cause for not complying with this fundamental aspect of the rule.

Accordingly, this court denies the application.

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MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR