

[Cite as *State v. Davis*, 2020-Ohio-3028.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 107925
 v. :
 :
 LARRY DAVIS, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: May 15, 2020

Cuyahoga County Court of Common Pleas
Case No. CR-18-627261-A
Application for Reopening
Motion No. 538185

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Jennifer M. Meyer, Assistant Prosecuting Attorney, *for appellee*.

Larry Davis, *pro se*.

FRANK D. CELEBREZZE, JR., P.J.:

{¶ 1} On March 26, 2020, the applicant, Larry Davis, pursuant to App.R. 26(B) and *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992), applied to reopen this court's judgment in *State v. Davis*, 8th Dist. Cuyahoga No. 107925,

2019-Ohio-4672, in which this court affirmed his convictions for multiple counts of rape, attempted rape, kidnapping, and sexual battery, but vacated his sentences and remanded for resentencing.¹ Davis now asserts that his appellate counsel should have argued that (1) evidence was left out that supported him, (2) he was denied his right to allocution before sentencing, (3) there was insufficient evidence to support the state's claim, (4) the police statements were inconsistent, (5) witnesses perjured themselves, (6) the witnesses' testimony contradicted each other, and (7) the DNA results were questionable due to mishandling. For the following reasons, this court denies the application, sua sponte.

{¶ 2} 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. This court issued its decision on November 14, 2019. Accordingly, Davis needed to file his application no later than February 12, 2020. Thus, his March 26, 2020 application is untimely on its face.

{¶ 3} In an effort to show good cause, Davis complains that his appellate counsel did not timely notify him of this court's decision, and that did not leave him time to appeal. Davis attached to his application a letter from his appellate counsel, dated November 25, 2019, in which she stated that this court had affirmed his

¹ From July 2016, through early 2018, Davis repeatedly raped his junior high niece. The grand jury indicted him on 19 counts of rape, attempted rape, kidnapping, and sexual battery. The jury found him guilty on 14 counts, and the trial judge sentenced him to an aggregate term of 36 years to life. This court vacated the sentence and remanded for resentencing, because the trial judge did not provide Davis with his right to allocution.

convictions but remanded for a new sentence. She then explained that her representation had ended, but that he could attempt to appeal to the Supreme Court of Ohio within 45 days. She also mentioned the possibility of filing an application to reopen under App.R. 26(B). She further gave him the address and telephone numbers for the Ohio Public Defender's office. The attached envelope indicates that this letter was mailed on December 5, 2019, and received at the North Central Correctional Institution on December 19, 2019.²

{¶ 4} This court rules that because Davis had explicit notification about App.R. 26(B) approximately two months before the due date of his application, he does not show good cause for an untimely filing. As the Supreme Court of Ohio noted 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, 8148 N.E.2d 861, the 90-day deadline for filing must be strictly enforced. An applicant cannot ignore that deadline, even if it means retaining new counsel or filing the application pro se. Lack of effort, lack of imagination, and ignorance of the law do not establish good cause for failure to seek timely relief under App.R. 26(B).

{¶ 5} The court further rules that because the due date of Davis's application was the middle of February, the tolling provisions of Am.Sub.H.B. No. 197 and the Supreme Court of Ohio's Administrative Actions order of March 27,

² This court notes that Davis listed his address as the North Central Correctional Institution on his application to reopen.

2020, do not apply. Those provisions are effective March 9, 2020, and Davis's application was due weeks before then.

{¶ 6} Finally, Davis merely lists his assignments of error and does not proffer any argument for them. Lack of argument is fatal to an application to reopen.

State v. Hess, 7th Dist. Jefferson No. 02 JE 36, 2004-Ohio-1197.

{¶ 7} Accordingly, this court denies the application to reopen.

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

KATHLEEN ANN KEOUGH, J., and
EILEEN A. GALLAGHER, J., CONCUR