

[Cite as *State v. Milam*, 2007-Ohio-1590.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 86268

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

KEITH MILAM

DEFENDANT-APPELLANT

JUDGMENT: APPLICATION DENIED

APPLICATION FOR REOPENING
MOTION NO. 392610
LOWER COURT NO. CR-450844
COMMON PLEAS COURT

RELEASE DATE: April 3, 2007

ATTORNEY FOR PLAINTIFF-APPELLEE

William D. Mason
Cuyahoga County Prosecutor
By: Brian S. Deckert
Asst. County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

FOR DEFENDANT-APPELLANT

Keith A. Milam, pro se
Inmate No. 482-380
Grafton Correctional Institution
2500 South Avon Belden Road
Grafton, Ohio 44044

[Cite as *State v. Milam*, 2007-Ohio-1590.]
COLLEEN CONWAY COONEY, J:

{¶ 1} Keith A. Milam has filed an application for reopening pursuant to App.R. 26(B). He seeks to reopen the appellate judgment rendered in *State v. Milam*, Cuyahoga App. No. 86268, 2006-Ohio-4742, that affirmed his convictions for rape and gross sexual imposition, but remanded the case for resentencing and a determination of whether he is a habitual sex offender. We decline to reopen Milam’s appeal.

{¶ 2} App.R. 26(B)(2)(b) requires that Milam 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 provided by App.R. 26(B)(2)(b), has recently stated that:

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.

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.)

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.

{¶ 3} Milam is attempting to reopen the appellate judgment that was journalized on September 25, 2006. His application for reopening was not filed until January 16, 2007, more than 90 days after journalization of the appellate judgment in *State v. Milam*, supra. He has failed to establish “a showing of good cause” for the untimely filing of his application for reopening. *State v. Klein* (Apr. 8, 1991), Cuyahoga App. No. 58389, reopening disallowed (Mar. 15, 1994), Motion No. 49260, affirmed (1994), 69 Ohio St.3d 1481; *State v. Trammell* (July 24, 1995), Cuyahoga App. No. 67834, reopening disallowed (Apr. 22, 1996), Motion No. 70493; *State v. Travis* (Apr. 5, 1990), Cuyahoga App. No. 56825, reopening disallowed (Nov. 2, 1994), Motion No. 51073, affirmed (1995), 72 Ohio St.3d 317. See, also, *State v. Gaston*, Cuyahoga App. No. 79626, 2007-Ohio-155; *State v. Torres*, Cuyahoga App. No. 86530, 2007-Ohio-9.

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

COLLEEN CONWAY COONEY,
PRESIDING JUDGE

KENNETH A. ROCCO, J., and
ANN DYKE, J., CONCUR