

[Cite as *State v. Garcia*, 2005-Ohio-5796.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 74427

STATE OF OHIO :
 : JOURNAL ENTRY
 Plaintiff-Appellee : AND
 : OPINION
 vs. :
 :
 MANUEL GARCIA :
 :
 Defendant-Appellant :
 :
 :
 DATE OF JOURNALIZATION : OCTOBER 20, 2005
 :
 CHARACTER OF PROCEEDINGS : Application for Reopening,
 : Motion No. 370916
 : Lower Court No. CR-358551
 : Common Pleas Court
 :
 JUDGMENT : APPLICATION DENIED.

APPEARANCES:

For plaintiff-appellee: WILLIAM D. MASON
Cuyahoga County Prosecutor
BY: REGAS T. ALLAN
Assistant County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

For defendant-appellant: MANUEL A. GARCIA
Inmate No. 357-175
North Central Correctional Inst.
P. O. Box 1812
Marion, Ohio 43301-1812

JUDGE JAMES J. SWEENEY:

{¶ 1} Manuel A. Garcia has filed an application for reopening pursuant to App.R. 26(B). Garcia is attempting to reopen the appellate judgment that was rendered by this court in *State v. Garcia* (July 8, 1999), Cuyahoga App. No. 74427. We decline to reopen Garcia's original appeal.

{¶ 2} As required by App.R. 26(B)(2)(b), Garcia must establish "a showing of good cause for untimely filing if the application is filed more than ninety days after journalization of the appellate judgment" which is subject to reopening. The Supreme Court of Ohio, with regard to the ninety day deadline as provided by App.R. 26(B)(2)(b), has established that:

We now reject those arguments, just as did the court of appeals earlier this year. The rule and its 90-day deadline were firmly established and regularly followed in Ohio's courts by the time LaMar's appeal as of right was decided by the court of appeals in August 1998, and the same remains true today. **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 St. Ct. 1148, 71 L.Ed. 2d 265, and that is what Ohio has done by creating a 90-day deadline for the filing of his application to reopen.**

LaMar could have retained new attorneys after the court of appeals issued its decision, 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, 1996-Ohio-52, 658 N.E.2d 722, and Lamar 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. Lamar, 102 Ohio St.3d 467, 2004 Ohio 3976, 812 N.E.2d 970, at 468.

{¶ 3} See, also, *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861; *State v. Coeey*, 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, Garcia is attempting to reopen the appellate judgment that was journalized on July 19, 1999. The application for reopening was not filed until April 21, 2005, more than ninety days after journalization of the appellate judgement in *State v. Garcia*, supra. Garcia 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.

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

MARY EILEEN KILBANE
JUDGE

ANN DYKE, P.J., CONCURS

SEAN C. GALLAGHER, J., CONCURS