

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 108944
	:	
v.	:	
	:	
KAINOA JACINTO,	:	
	:	
Defendant-Appellant.	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT: APPLICATION DENIED**  
**RELEASED AND JOURNALIZED: March 17, 2021**

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Cuyahoga County Court of Common Pleas  
Case No. CR-18-633255-A  
Application for Reopening  
Motion No. 543551

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Brandon A. Piteo, Assistant Prosecuting Attorney, *for appellee*.

David L. Doughten, *for appellant*.

EILEEN A. GALLAGHER, J.:

**{¶ 1}** Kainoa Jacinto has filed an application for reopening pursuant to App.R. 26(B). Jacinto is attempting to reopen the appellate judgment rendered in *State v. Jacinto*, 8th Dist. Cuyahoga No. 108944, 2019-Ohio-5113, that affirmed his

conviction and sentence for the offense of felonious assault (R.C. 2903.11(A)(1)). We decline to reopen Jacinto's appeal.

{¶ 2} App.R. 26(B)(2)(b) requires that Jacinto establish “a showing of good cause for untimely filing if the application is filed more than 90 days after journalization of the appellate judgment” that is subject to reopening. The Supreme Court of Ohio, regarding the 90-day deadline provided by App.R. 26(B)(2)(b), has established that:

[w]e now reject [the applicant's] claims that those excuses gave good cause to miss the 90-day deadline in App.R. 26(B). \* \* \* 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. \* \* \* 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 [the applicant] offers no sound reason why he — unlike so many other Ohio criminal defendants — could not comply with that fundamental aspect of the rule.

*State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 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, 653 N.E.2d 252 (1995); *State v. Reddick*, 72 Ohio St.3d 88, 647 N.E.2d 784 (1995).

{¶ 3} Herein, Jacinto is attempting to reopen the appellate judgment that was journalized on July 16, 2020. The application for reopening was not filed until January 19, 2021, more than 90 days after journalization of the appellate judgment in *Jacinto, supra*. Jacinto has failed to argue any showing of good cause for the untimely filing of his application for reopening. *State v. McCrimon*, 8th Dist. Cuyahoga No. 87617, 2017-Ohio-5742; *State v. Hammond*, 8th Dist. Cuyahoga No. 100656, 2016-Ohio-8300; *State v. Battiste*, 8th Dist. Cuyahoga No. 102299, 2016-Ohio-7232.

{¶ 4} In addition, appellant appears to argue that his App.R. 26(B) application for reopening was timely filed, within 90 days of the denial of his App.R. 26(A) application for reconsideration, as journalized on December 16, 2020. However, this court has established that motions do not toll the time for the timely filing of an App.R. 26(B) application for reopening:

[Applicant's] claim is simply that an intervening motion tolls the time for filing an application to reopen. But motions do not toll the time in which to file. In *State v. Allen*, 8th Dist. Cuyahoga No. 92482, 2010-Ohio-9, reopening disallowed, 2011-Ohio-588, [applicant] endeavored to toll the time for filing by submitting a "Notice of intent to file App.R. 26(B)." This court rejected [applicant's] attempt because the rules do not allow such a "notice" and the Supreme Court of Ohio has insisted on strictly enforcing the 90-day deadline. Further, when this court disallowed reopening the application in *State v. Jarrett*, 8th Dist. Cuyahoga No. 98759, 2014-Ohio-488, the court again found that moving to toll the time in which to apply does not change the timeline for App.R. 26. Even appeals to higher courts do not toll the time to file under App.R. 26. *State v. Keith*, 119 Ohio St.3d 161, 2008-Ohio-3866, 892 N.E.2d 912.

*State v. Johnson*, 8th Dist. Cuyahoga No. 105560, 2018-Ohio-2836, ¶ 3.

{¶ 5} Application denied.

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EILEEN A. GALLAGHER, JUDGE

ANITA LASTER MAYS, P.J., and  
LARRY A. JONES, SR., J., CONCUR