

OPINIONS OF THE SUPREME COURT OF OHIO

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The State of Ohio, Appellee, v. Spirko, Appellant.
[Cite as State v. Spirko (1994), Ohio St.3d .]
Motion for delayed reconsideration of appeal denied.
(No. 89-722 -- Submitted August 17, 1994 -- Decided November 9, 1994.)

On Motion for Delayed Reconsideration.

Appellant, John G. Spirko, Jr., was convicted of aggravated murder and sentenced to death. On direct appeal as of right, the court of appeals affirmed the conviction and sentence. State v. Spirko (Mar. 6, 1989), Van Wert App. No. 15-84-22, unreported, 1989 WL 17734. We also affirmed when he appealed to this court. State v. Spirko (1991), 59 Ohio St.3d 1, 570 N.E.2d 229, certiorari denied (1991), 502 U.S. , 112 S.Ct. 312, 116 L.Ed.2d 254. Spirko then petitioned the trial court for postconviction relief under R.C. 2953.21; that petition was denied, and the court of appeals dismissed his appeal by entry. State v. Spirko (Apr. 29, 1993), Van Wert App. No. 15-93-2, unreported, jurisdictional motion overruled (1993), 67 Ohio St.3d 1479, 620 N.E.2d 852. Next, Spirko filed a motion for delayed reconsideration of his direct appeal in the court of appeals, pursuant to App.R.26(B), claiming he had been denied effective assistance of counsel when that court first considered his case in 1989. (See State v. Murnahan [1992], 63 Ohio St.3d 60, 584 N.E.2d 1204.) The court of appeals denied that motion for reconsideration, State v. Spirko (Feb. 15, 1994), Van Wert App. No. 15-84-22, unreported, and we affirmed that judgment, (1994), 69 Ohio St.3d 1448, 633 N.E.2d 542. Spirko now claims that he lacked effective assistance of counsel in his 1991 direct appeal to this court, and therefore asks us to reconsider his direct appeal under S.Ct.Prac.R. XI(1)(B).

David H. Bodiker, Ohio Public Defender, and Laurence E. Komp, Assistant Public Defender for appellant.

Per Curiam. We deny the motion. Spirko's 1991 appeal to this court was not a first appeal as of right; therefore, he had no constitutional right to counsel, hence no constitutional

right to effective assistance. See *State v. Buell* (1994), 70 Ohio St.3d 1211, 639 N.E.2d 110.

Motion denied.

Moyer, C.J., A.W. Sweeney, Douglas, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.

Wright, J., dissents.