

THE STATE OF OHIO, APPELLEE, v. SMITH, APPELLANT.

[Cite as *State v. Smith*, 1994-Ohio-51.]

Appellate procedure—App.R. 26(B)—Application for reopening appeal from judgment of conviction based on claim of ineffective assistance of appellate counsel—Application denied when appellant fails to show that appellate counsel was ineffective or that appellant was prejudiced by his counsel's performance.

(No. 94-813—Submitted August 17, 1994—Decided November 9, 1994.)

APPEAL from the Court of Appeals for Cuyahoga County, No. 54416.

{¶ 1} Appellant, Donald L. Smith, alleges he was convicted of one count of aggravated robbery, one count of kidnapping, and one count of felonious assault and was sentenced to three concurrent terms of imprisonment, two for ten to twenty-five years and one for eight to fifteen years. He appealed, and the Court of Appeals for Cuyahoga County affirmed the conviction by judgment entry of November 10, 1988. In 1993, he applied to the court of appeals under App. R. 26(B) to reopen the appeal from the judgment of conviction and sentence, alleging ineffective assistance of appellate counsel. The court of appeals denied the application on the basis that appellant failed to meet the standard for reopening his appeal. In other words, appellant failed to show that appellate counsel was ineffective or that appellant was prejudiced by his counsel's performance. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674. Appellant appeals the denial to this court.

Stephanie Tubbs Jones, Cuyahoga County Prosecuting Attorney, and *Karen L. Johnson*, Assistant Prosecuting Attorney, for appellee.

SUPREME COURT OF OHIO

Donald L. Smith, pro se.

Per Curiam.

{¶ 2} The decision of the court of appeals is affirmed for the reasons stated by the court of appeals.

Judgment affirmed.

MOYER, C.J., A.W. SWEENEY, DOUGLAS, RESNICK, F.E. SWEENEY and
PFEIFER, JJ., concur.

WRIGHT, J., dissents.
