

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

[Cite as *State v. Carter*, 1994-Ohio-55.]

Appellate procedure—Application for reopening appeal from judgment and conviction based on claim of ineffective assistance of appellate counsel—Application denied when not filed within ninety days of journalization of appellate judgment—App.R. 26(B)(1).

(No. 94-1309—Submitted August 17, 1994—Decided November 9, 1994.)

APPEAL from the Court of Appeals for Hamilton County, No. C-890513.

{¶ 1} Appellant Clarence Carter filed an application in the Court of Appeals for Hamilton County under App. R. 26(B) to reopen the appeal from the judgment of conviction and sentence under which he was convicted of aggravated murder and sentenced to death, alleging ineffective assistance of appellate counsel. The court of appeals denied the application, noting that it had been filed more than ninety days after journalization of the appellate judgment. The court further held that appellant had failed to show good cause for the untimely filing, specifically holding that the fact that appellant was represented by the same counsel on direct appeal to the court of appeals and this court did not establish good cause for filing this application over one year after this court's decision.

{¶ 2} Appellant appealed to this court.

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *L. Susan Laker*, Assistant Prosecuting Attorney, for appellee.

David H. Bodiker, Ohio Public Defender, *Linda E. Prucha* and *Joseph E. Wilhelm*, Assistant Public Defenders, for appellant.

SUPREME COURT OF OHIO

Per Curiam.

{¶ 3} We affirm the decision of the court of appeals for the reasons stated by the court of appeals.

Judgment affirmed.

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