

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

[Cite as *State v. Graham*, 1994-Ohio-60.]

Appellate procedure—Application for reopening appeal from judgment and conviction based on claim of ineffective assistance of appellate counsel—Application denied when, inter alia, no colorable claim of ineffective assistance of appellate counsel exists.

(No. 94-1879—Submitted November 29, 1994—Decided December 23, 1994.)

APPEAL from the Court of Appeals for Cuyahoga County, No. 33350.

{¶ 1} According to appellant, Floyd Graham, he was convicted in 1973 of first-degree murder (former R.C. 2901.01), taking the life of a police officer (former R.C. 2901.04), and intentional shooting (former R.C. 2901.23). The Court of Appeals for Cuyahoga County affirmed Graham's convictions, *State v. Graham* (June 12, 1975), Cuyahoga App. No. 33350, unreported. This court overruled Graham's motion for leave to appeal.

{¶ 2} On May 6, 1994, Graham filed in the court of appeals a delayed application for reconsideration of his appeal from the judgment of conviction. The application, filed pursuant to App. R. 14(B) and former App. R. 26, alleged ineffective assistance of appellate counsel. See *State v. Murnahan* (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204. The court of appeals overruled the application. (May 17, 1994), Cuyahoga App. No. 33350, unreported. Graham did not appeal that judgment.

{¶ 3} However, on June 10, 1994, Graham applied again for reopening of the appeal, this time under App. R. 26(B), adopted July 1, 1993. The court of appeals denied this second application because Graham had not shown good cause for failing to file within ninety days after App. R. 26(B) took effect; because the

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application exceeded the ten-page limit of App. R. 26(B)(4); and because the court's denial of the May 6th application was res judicata to the June 10th application. Nonetheless, the court also examined the application's merits, finding that "there exists no colorable claim of ineffective assistance of appellate counsel." Graham appeals the denial of his June 10th application.

Stephanie Tubbs Jones, Cuyahoga County Prosecuting Attorney, and
George J. Sadd, Assistant Prosecuting Attorney, for appellee.

Paul Mancino, Jr., for appellant.

Per Curiam.

{¶ 4} We affirm the judgment of the court of appeals for the reasons stated in that court's opinion.

Judgment affirmed.

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