

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

[Cite as *State v. Malin*, 1994-Ohio-68.]

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

(No. 94-1755—Submitted October 24, 1994—Decided December 21, 1994.)

APPEAL from the Court of Appeals for Cuyahoga County, No. 37389.

{¶ 1} It is undisputed that appellant, Chester W. Malin, was convicted of aggravated murder in 1976 and sentenced to life imprisonment. He appealed, and the court of appeals affirmed the conviction. *State v. Malin* (Dec. 28, 1978), Cuyahoga App. No. 37389, unreported. Appellant's motion for leave to appeal to this court was overruled. *State v. Malin* (May 10, 1979), case No. 79-301. The Supreme Court of the United States denied certiorari. *Malin v. Ohio* (1979), 444 U.S. 936, 100 S.Ct. 284, 62 L.Ed.2d 195. Appellant applied to the court of appeals to reopen the appeal from the judgment of conviction pursuant to App. R. 26(B), alleging ineffective assistance of appellate counsel because his appellate counsel failed to assert an abuse of discretion by the trial court by not admitting a polygraph examination. The court of appeals denied the application on the basis that the application was not timely filed, and appellant had not shown good cause for the delay, and that the issue was *res judicata*. Appellant appeals the denial to this court.

Stephanie Tubbs Jones, Cuyahoga County Prosecuting Attorney, and *Elaine Welsh*, Assistant Prosecuting Attorney, for appellee.

Chester W. Malin, *pro se*.

SUPREME COURT OF OHIO

Per Curiam.

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

Judgment affirmed.

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