

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

[Cite as *State v. Tyler*, 1994-Ohio-8.]

Appellate procedure—Application for reopening appeal from judgment and conviction based on claim of ineffective assistance of appellate counsel—Application denied when issues raised are res judicata.

(No. 94-1636—Submitted November 1, 1994—Decided December 30, 1994.)

APPEAL from the Court of Appeals for Cuyahoga County, No. 51696.

{¶ 1} Appellant, Arthur Tyler, was convicted of aggravated murder with felony-murder and firearm specifications, and aggravated robbery, and was sentenced to death. The court of appeals affirmed the convictions. This court affirmed the appellate court. *State v. Tyler* (1990), 50 Ohio St. 3d 24, 553 N.E. 2d 576. He subsequently filed an application for delayed reconsideration in the court of appeals, it seems on or about June 30, 1993, pursuant to *State v. Murnahan* (1992), 63 Ohio St. 3d 60, 584 N.E. 2d 1204, arguing that his appellate counsel at the court of appeals was ineffective by failing to raise one hundred twenty-one additional assignments of error. The court of appeals denied the application, holding that the issues were res judicata because appellant, who filed his own supplemental brief at the court of appeals, could have raised the issues there, since he raised others, and because he had new counsel on direct appeal to this court who could have raised the issues there. Appellant now appeals that decision.

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

David H. Bodiker, Ohio Public Defender, *Pamela Prude-Smithers* and
Randall L. Porter, Assistant State Public Defenders, for appellant.

SUPREME COURT OF OHIO

Per Curiam.

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

Judgment accordingly.

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

WRIGHT, J., dissents.
