

**THE STATE OF OHIO, APPELLEE, v. DEVER, APPELLANT.**

**[Cite as *State v. Dever*, 1995-Ohio-115.]**

*Appellate procedure—Application for reopening appeal from judgment and conviction based on claim of ineffective assistance of appellate counsel—Application denied when applicant fails to establish good cause for failure to file the motion within ninety days from journalization of the appellate judgment, as required by App.R. 26(B).*

(No. 95-831—Submitted July 26, 1995—Decided October 11, 1995.)

APPEAL from the Court of Appeals for Hamilton County, No. C-880712.

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{¶ 1} Appellant, Frederick M. Dever, Jr., was convicted of rape. The court of appeals affirmed the conviction. *State v. Dever* (Jan. 31, 1990), Hamilton App. No. C-880712, unreported 1990 WL 6405. We overruled his motion for leave to appeal. *State v. Dever* (1990), 52 Ohio St.3d 701, 556 N.E.2d 526. The United States Supreme Court granted certiorari, vacated the judgment and remanded the case to the court of appeals. *Dever v. Ohio* (1990), 498 U.S. 1009, 111 S. Ct. 575, 112 L. Ed.2d 581. The court of appeals reversed the decision of the trial court. The state appealed to this court, and we reversed the judgment of the court of appeals and reinstated the conviction and sentence. *State v. Dever* (1992), 64 Ohio St. 3d 401, 596 N.E.2d 436.

{¶ 2} It is undisputed that in February 1995, Dever filed with the court of appeals an application to reopen his appeal under App.R. 26(B), alleging ineffective assistance of his appellate counsel. The court of appeals denied the application, finding that appellant had failed to establish good cause for not filing the application to reopen within ninety days from the journalization of the appellate judgment, as required by App.R. 26(B)(2)(b). The court of appeals also held that the judgment

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Dever was seeking to open had been rendered a nullity by the United States Supreme Court and was therefore impossible to reopen.

{¶ 3} Appellant appeals the denial to this court.

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*Joseph T. Deters*, Hamilton County Prosecuting Attorney, and *Christian J. Schaefer*, Assistant Prosecuting Attorney, for appellee.

*Frederick M. Dever, Jr., pro se.*

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***Per Curiam.***

{¶ 4} We affirm the decision of the court of appeals for the reasons stated in its opinion.

*Judgment affirmed.*

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