

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

[Cite as *State v. Peeples*, 1995-Ohio-30.]

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

(No. 95-740—Submitted July 26, 1995—Decided December 6, 1995.)

APPEAL from the Court of Appeals for Pickaway County, No. 92 CA 7.

{¶ 1} Appellant, Kavin L. Peeples, was convicted of aggravated murder in violation of R.C. 2903.01(A) with specifications pursuant to R.C. 2929.04 (aggravated murder committed while the defendant was an inmate in a detention facility). The Court of Appeals for Pickaway County affirmed the judgment of the trial court. *State v. Peeples* (1994), 94 Ohio App.3d 34, 640 N.E.2d 208.

{¶ 2} On November 10, 1994, appellant filed an application requesting delayed reconsideration. The court of appeals treated this as an application for reopening pursuant to App. R. 26(B), and found that, although appellant had established good cause for not filing the application within the ninety days required under App. R. 26(B), he had failed to state a colorable claim of ineffective assistance of appellate counsel. Thus, the appellate court denied appellant's application for delayed reconsideration, and this appeal followed.

Kavin Peeples, pro se.

Per Curiam.

SUPREME COURT OF OHIO

{¶ 3} In his application to reopen, appellant raised five separate issues regarding appellate counsel's ineffectiveness. Each issue involved appellant's alleged mental incapacity. However, the court of appeals found that "[t]he issue of Peeple's mental incapacity was previously and properly raised on direct appeal." Specifically, the court of appeals found that appellant's problem was not his appellate counsel's performance, but the fact that his motion to suppress his confession to the murder was denied at trial. We concur.

{¶ 4} Accordingly, 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.
