

1 The State of Ohio, Appellee, v. Cooley, Appellant.

2 [Cite as State v. Cooley (1995), Ohio St. 3d .]

3 Appellate procedure -- Application for reopening appeal from judgment and  
4 conviction based on claim of ineffective assistance of appellate  
5 counsel -- Application denied when applicant fails to establish good  
6 cause for failing to file timely application to reopen.

7 (No. 95-435--Submitted June 21, 1995 --Decided August 30, 1995.)

8 APPEAL from the Court of Appeals for Summit County, No. 12943.

9 Appellant, Richard Cooley II, was convicted of four counts of

10 aggravated murder, with three capital specifications attached to each count;

11 two counts of kidnapping; two counts of rape; two counts of aggravated

12 robbery; and one count of felonious assault. He received two sentences of

13 death. The court of appeals affirmed the convictions and sentences. *State v.*

14 *Cooley* (Dec. 23, 1987), Summit App.No. 12943. On direct appeal as of

15 right, we also affirmed appellant's convictions and death sentences. *State v.*

16 *Cooley* (1989), 46 Ohio St. 3d 20, 544 N.E.2d 895, certiorari denied, *Cooley*

17 *v. Ohio* (1990), 499 U.S. 954, 111 S.Ct. 1431, 113 L. Ed.2d 482, rehearing

18 denied (1991), 500 U.S. 938, 111 S Ct. 2068, 114 L. Ed.2d 472.

1 Appellant's original ineffective assistance of counsel claim was filed  
2 as a post-conviction action on February 6, 1992. On February 19, 1992, this  
3 court decided in *State v. Murnahan* (1992), 63 Ohio St. 3d 60, 584 N.E.2d  
4 1204, that ineffective assistance of appellate counsel claims were not  
5 cognizable in post-conviction actions. On appeal from the dismissal of  
6 appellant's post-conviction action, the court of appeals held that *Murnahan*  
7 controlled and that appellant's ineffective assistance of appellate counsel  
8 claim could not be heard in a post-conviction proceeding. *State v. Cooley*  
9 (May 25, 1994), Summit App. Nos. 15895 and 15966, unreported. On July  
10 1, 1993, App.R. 26 (B) became effective, requiring that an application to  
11 reopen an appeal, where ineffective assistance of appellate counsel is  
12 alleged, be filed within ninety days from the journalization of the appellate  
13 judgment.

14 Appellant filed an application to reopen his direct appeal on  
15 November 3, 1994, almost seven years after the conclusion of his direct  
16 appeal and over one year after App. R. 26 (B) became effective. The court  
17 of appeals denied appellant's application to reopen, finding that he had  
18 failed to establish good cause for not filing the application to reopen within

1 ninety days from the effective date of App.R. 26(B), July 1, 1993.

2 Appellant appeals the denial of his application.

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4 *Maureen O'Connor*, Summit County Prosecuting Attorney, and

5 *William D. Wellemeyer*, Assistant Prosecuting Attorney, for appellee.

6 *David H. Bodiker*, Ohio Public Defender, *Cynthia A. Yost* and

7 *William S. Lazarow*, Assistant Public Defenders, for appellant.

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9 *Per Curiam*. Appellant has failed to show good cause for the

10 untimely filing of his application to reopen. See *State v. Reddick* (1995), 72

11 Ohio St.3d 88, 647 N.E.2d 784. We therefore affirm the judgment of the

12 court of appeals.

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14 *Judgment affirmed.*

15 MOYER, C.J., DOUGLAS, WRIGHT, RESNICK, F.E. SWEENEY and

16 PFEIFER, JJ., concur.

17 COOK, J., not participating.

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