

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

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

3 Appellate procedure -- Application for reopening appeal from judgment and
4 conviction based on claim of ineffective assistance of appellate counsel
5 -- Application denied when applicant fails to show good cause for
6 failing to file his application within ninety days after journalization of
7 the appellate judgment as required by App.R. 26(B).

8 (No. 95-374-- Submitted June 21, 1995 -- Decided August 30, 1995.)

9 Appeal from the Court of Appeals for Putnam County, No. 12-87-2.

10 Appellant, Kenneth T. Richey, was convicted of aggravated murder,
11 aggravated arson, breaking and entering, and child endangering, and
12 sentenced to death in 1987. The court of appeals affirmed the convictions
13 and sentence. *State v. Richey* (Dec. 28, 1989), Putnam App. No. 12-87-2,
14 unreported, 1989 WL 156561. On direct appeal as of right, we also
15 affirmed. *State v. Richey* (1992), 64 Ohio St.3d 353, 595 N.E.2d 915,
16 certiorari denied, *Richey v. Ohio* (1993), 507 U.S. ____, 113 S.Ct. 1592,
17 123 L.Ed.2d 157.

1 In April 1994, Richey filed with the court of appeals an application to
2 reopen his appeal under App.R. 26(B), alleging ineffective assistance of his
3 appellate counsel. The court of appeals denied the application, finding that
4 appellant had failed to establish good cause for not filing the application to
5 reopen within ninety days from the journalization of the appellate judgment,
6 as required by App.R. 26(B)(1) and (B)(2)(b). The court of appeals also
7 held that appellant's twenty-two proposed assignments of error failed to
8 raise any genuine issue as to whether appellant was deprived of the effective
9 assistance of counsel on appeal.

10 Appellant appeals the denial to this court. Appellant also now submits
11 propositions of law XXIII through XXV, asserting he was denied the
12 effective assistance of appellate counsel in his appeal before this court.

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Daniel R. Gerschutz, Putnam County Prosecuting Attorney, for
15 appellee.

1 WRIGHT, J., dissents.

2 WRIGHT, J., dissenting. I dissent for several reasons, most of which

3 are included within Justice Herbert R. Brown's dissent in *State v. Richey*

4 (1992), 64 Ohio St.3d 353, 373, 595 N.E.2d 915, 931.

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