

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

[Cite as *State v. Eads*, 1995-Ohio-5.]

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 failing to file his application within ninety days after journalization of the appellate judgment as required by App.R. 26(B)(2)(b) and proposed assignments of error fail to establish colorable claim of ineffective assistance of appellate counsel.

(No. 95-146—Submitted April 24, 1995—Decided August 23, 1995.)

Appeal from the Court of Appeals for Cuyahoga County, No. 62775.

{¶ 1} Appellant, Daniel T. Eads, was convicted of murder. On direct appeal as of right, the Court of Appeals for Cuyahoga County unanimously affirmed the conviction. *State v. Eads* (July 15, 1993), Cuyahoga App. No. 62775, unreported, 1993 WL 266947. We overruled Eads' motion for leave to appeal and claimed appeal of right on November 17, 1993. *State v. Eads*, No. 93-1751.

{¶ 2} On April 18, 1994, Eads filed an application for reopening 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 appellant's five proposed assignments of error failed to establish a colorable claim of ineffective assistance of appellate counsel. Further, Eads failed to demonstrate that circumstances render the application of *res judicata* to his prayer for reopening unjust. Appellant appeals the denial to this court.

SUPREME COURT OF OHIO

Stephanie Tubbs Jones, Cuyahoga County Prosecuting Attorney, and *Karen L. Johnson*, Assistant Prosecuting Attorney for appellee.
Daniel Eads, pro se.

Per Curiam.

{¶ 3} We affirm the judgment 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.
