

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

2 [Cite as *State v. Carroll* (1996), _____ Ohio St. 3d _____.]

3 *Appellate procedure -- Application for reopening appeal from*
4 *judgment and conviction based on claim of ineffective*
5 *assistance of appellate counsel -- Application denied when no*
6 *colorable issue of ineffective assistance of appellate counsel*
7 *raised.*

8 (No. 95-1030--Submitted September 12, 1995--Decided January 10,
9 1996.)

10 Appeal from the Court of Appeals for Lorain County, Nos.

11 93CA005775 and 94CA005814.

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13 Appellant, Jack Lynn Carroll, was convicted of four counts of
14 aggravated drug trafficking, and one count each of drug abuse, having
15 weapons under disability, unlawful possession of dangerous ordnance,
16 possession of drug abuse paraphernalia, and permitting drug abuse. The
17 Court of Appeals for Lorain County affirmed appellant's convictions, but
18 reversed the trial court's order requiring forfeiture of appellant's residence

1 and remanded the case for the trial court to ascertain whether the forfeiture
2 constituted an excessive fine under the state and federal Constitutions.

3 Appellant filed a timely application to reopen his direct appeal,
4 alleging numerous issues of ineffective assistance of appellate counsel. The
5 court of appeals thoroughly reviewed the application for reopening pursuant
6 to App. R. 26(B), held that appellant had failed to raise a colorable issue of
7 ineffective assistance of appellate counsel, and denied appellant's
8 application. Appellant now appeals to this court.

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10 *Gregory A. White*, Lorain County Prosecuting Attorney, and *Lisa A.*
11 *Locke Graves*, Assistant Prosecuting Attorney, for appellee.

12 *Jack Lynn Carroll*, *pro se*.

13

14 *Per Curiam*. We affirm the decision of the court of appeals.

15 Appellant principally argues that his appellate counsel had a conflict of
16 interest because she shared office space with his trial counsel. The court of
17 appeals found no conflict of interest. We agree. Accordingly, appellant has
18 not shown the deficient performance of counsel and resultant prejudice

1 required under *Strickland v. Washington* (1984), 466 U.S. 668, 104 S. Ct.
2 2052, 80 L. Ed. 2d 674, nor has he shown the presumption of prejudice
3 which arises when a defendant demonstrates that counsel actively
4 represented conflicting interests and that the actual conflict of interest
5 adversely affected counsel's performance, as required under *Cuyler v.*
6 *Sullivan* (1980), 446 U.S. 335, 100 S. Ct. 1708, 64 L. Ed. 2d 333. See, also,
7 *State v. Haberek* (1988), 47 Ohio App. 3d 35, 38, 546 N. E. 2d 1361, 1365.

8 In his third proposition of law, appellant raises several issues he
9 alleges as trial errors, but without relating them to the effective assistance of
10 counsel issue. Applications under App. R. 26(B) relate only to the issue of
11 the effective assistance of appellate counsel. Therefore, these issues have
12 no merit.

13 In his fourth proposition of law, appellant argues that App. R. 26(B)
14 denies him due process because no appellate counsel was appointed and a
15 ten-page limit was imposed on briefs in the application for reopening.
16 These issues were apparently not raised in the court of appeals, and we do
17 not consider them for the first time on appeal. *State v. Williams* (1977), 51

1 Ohio St. 2d 112, 5 O.O. 3d 98, 364 N. E. 2d 1364, paragraph two of the
2 syllabus.

3 The judgment of the court of appeals denying the application to
4 reopen is affirmed.

5 *Judgment affirmed.*

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

8 COOK, J., not participating.