

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

[Cite as *State v. Sibert*, 1996-Ohio-15.]

Appellate procedure—Application for reopening appeal from judgment and conviction based on claim of ineffective assistance of appellate counsel—Application denied when applicant not prejudiced by counsel’s failure to file a motion to suppress certain incriminating statements made to the police.

(No. 95-1396—Submitted September 26, 1995—Decided January 17, 1996.)

APPEAL from the Court of Appeals for Adams County, No. 93CA562.

{¶ 1} Appellant, Jeffrey B. Sibert, was convicted of three counts of rape with force specifications and sentenced to two consecutive terms of life imprisonment and to a third such term concurrent with the other two. The convictions were affirmed on appeal. *State v. Sibert* (1994), 98 Ohio App.3d 412, 648 N.E.2d 861.

{¶ 2} Subsequently, appellant filed an application to reopen his appeal pursuant to App.R. 26(B), alleging ineffective assistance of appellate counsel because appellate counsel did not raise the issue that as trial counsel he failed to file a motion to suppress certain incriminating statements appellant had made to a police officer. The court of appeals examined the record and, *inter alia*, held that even if it had been error not to file a motion to suppress, appellant had not been prejudiced because the three victims all testified at trial.

{¶ 3} Appellant appeals from the denial of his application to reopen.

Greg Carroll, Adams County Prosecuting Attorney, for appellee.

Jeffrey B. Sibert, *pro se*.

Per Curiam.

{¶ 4} The judgment of the court of appeals is affirmed for the reason stated above. On appeal, appellant alleges failure of trial counsel to present the issue of his mental competence. Apparently, the issue was not raised in the court of appeals; therefore, we will not consider it for the first time on appeal. *Zakany v. Zakany* (1984), 9 Ohio St.3d 192, 193, 9 OBR 505, 506-507, 459 N.E.2d 870, 872.

Judgment affirmed.

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