

The State of Ohio, Appellee, v. Pierce, Appellant.

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

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 failure to file the motion within ninety days after journalization of the court of appeals' decision affirming the conviction, as required by App.R. 26(B).

(No. 95-1830--Submitted October 24, 1995--Decided February 7, 1996.)

Appeal from the Court of Appeals for Lake County, No. 89-L-14-170.

In 1989, appellant, Sherman Pierce, was convicted of kidnapping, rape, and felonious sexual penetration. His convictions were affirmed on appeal. *State v. Pierce* (Dec. 28, 1990), Lake App. No. 89-L-14-170, unreported, 1990 WL 222991. In 1995, he filed an application in the court of appeals to reopen his appeal under App.R. 26(b), alleging ineffective assistance of appellate counsel. He alleged as good cause for not filing his application within ninety days of journalization of the judgment sought to be reopened, as required by App.R. 26(B)(2)(B), that App.R. 26(B) was not

enacted until three years after his appeal was journalized, that “his brother retained counsel on his behalf,” that he had difficulty in obtaining access to the record, and that he lacked legal experience. The court of appeals did not find good cause for the untimely filing and denied the application to reopen, citing, *inter alia*, *State v. Reddick* (1995), 72 Ohio St.3d 88, 90-91, 647 N.E.2d 784, 786 (“applicant *** may not simply rely on the fact that App.R. 26[B] did not exist within the ninety days following journalization” [since other procedures were previously available], and “[l]ack of effort or imagination, and ignorance of the law, *** do not automatically establish good cause ***”), and *State v. Franklin* (1995), 72 Ohio St.3d 372, 650 N.E.2d 447. Appellant appealed the denial to this court.

Charles Coulson, Lake County Prosecuting Attorney, and *Ariana E.*

Tarighati, Assistant Prosecuting Attorney, for appellee.

Sherman Pierce, *pro se*.

Per Curiam. The judgment of the court of appeals is affirmed for the reasons stated in its opinion.

Judgment affirmed.

MOYER, C.J., DOUGLAS, WRIGHT, RESNICK, F.E. SWEENEY, PFEIFER

and COOK, JJ., concur.