

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

[Cite as *State v. Cook*, 1996-Ohio-26.]

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 from journalization of the appellate judgment, as required by App.R. 26(B)(2)(b).

(No. 95-1762—Submitted December 5, 1995—Decided February 14, 1996.)

APPEAL from the Court of Appeals for Hamilton County, No. C-900676.

{¶ 1} Appellant, Derrick Cook, was convicted of aggravated murder, aggravated robbery and kidnapping, and sentenced to death in 1990. The court of appeals affirmed the convictions and sentence. *State v. Cook* (Apr. 8, 1992), Hamilton App. No. C-900676, unreported, 1992 WL 74199. On direct appeal as of right, we also affirmed. *State v. Cook* (1992), 65 Ohio St.3d 516, 605 N.E.2d 70. Subsequently, Cook's petitions for post-conviction relief were dismissed, and the judgment of dismissal was affirmed by the court of appeals. *State v. Cook* (Dec. 29, 1995), Hamilton App. No. C-950090, unreported.

{¶ 2} It is undisputed that in April 1995, Cook filed with the court of appeals an application to reopen his appeal under App.R. 26(B) and *State v. Murnahan* (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204, 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).

SUPREME COURT OF OHIO

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Christian J. Schaefer*, Assistant Prosecuting Attorney, for appellee.

David H. Bodiker, Ohio Public Defender, and *John B. Heasley*, Assistant Public Defender, for appellant.

Per Curiam.

{¶ 3} We affirm the decision of the court of appeals for the reasons stated in its opinion.

Judgment affirmed.

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

WRIGHT, J., dissents.
