

**THE STATE OF OHIO, APPELLEE, v. BENNER, APPELLANT.**

**[Cite as *State v. Benner*, 1996-Ohio-34.]**

*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 court of appeals’ decision affirming the conviction.*

(No. 95-2552—Submitted May 21, 1996—Decided July 24, 1996.)

APPEAL from the Court of Appeals for Summit County, No. 12664.

---

{¶ 1} Appellant, Glenn L. Benner II, was convicted of the aggravated murders of two persons with death-penalty specifications, the attempted aggravated murders of two others, as well as six counts of rape, three counts of kidnapping, aggravated burglary, gross sexual imposition, and attempted rape. The trial court sentenced Benner to death for the aggravated murders, and the court of appeals affirmed the convictions and sentence. *State v. Benner* (July 29, 1987; July 22, 1987), Summit App. No. 12664, unreported, 1987 WL 15103, 15078. On direct appeal as of right, we also affirmed. *State v. Benner* (1988), 40 Ohio St.3d 301, 533 N.E.2d 701, certiorari denied *sub nom. Benner v. Ohio* (1990), 494 U.S. 1090, 110 S.Ct. 1834, 108 L.Ed.2d 962.

{¶ 2} On June 30, 1993, Benner filed an application for delayed reconsideration with the court of appeals pursuant to *State v. Murnahan* (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204, alleging ineffective assistance of appellate counsel. The court of appeals noted that Benner’s “application was not filed until approximately six years after this court affirmed his conviction and sentence.” Further, the court of appeals found that Benner “has failed to demonstrate good

SUPREME COURT OF OHIO

cause why his application was not timely filed. Inasmuch as appellant failed to articulate ‘particular circumstances’ establishing good cause for the delay \*\*\*, his application is denied.” Benner now appeals that denial to this court.

---

*Maureen O’Connor*, Summit County Prosecuting Attorney, and *William D. Wellemeyer*, Assistant Prosecuting Attorney, for appellee.

*David H. Bodiker*, Ohio Public Defender, *Randall L. Porter* and *Stephen Hardwick*, Assistant Public Defenders, for appellant.

---

***Per Curiam.***

{¶ 3} We affirm the judgment of the court of appeals for the reasons stated in its journal entry.

*Judgment affirmed.*

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

---