

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

[Cite as *State v. Mullins*, 1996-Ohio-35.]

Appellate procedure—Application for reopening appeal from judgment and conviction based on claim of ineffective assistance of appellate counsel—Application denied when issue was reviewed in applicant’s direct appeal and found to be without merit.

(No. 96-316—Submitted May 21, 1996—Decided July 24, 1996.)

APPEAL from the Court of Appeals for Pickaway County, No. 89CA27.

{¶ 1} Appellant, Herbert E. Mullins, was convicted in August 1989 on charges of felonious assault and carrying a concealed weapon. Appellant was thereafter sentenced to an indefinite term of imprisonment. Upon appeal, the convictions were affirmed. *State v. Mullins* (Jan. 9, 1991), Pickaway App. No. 89CA27, unreported.

{¶ 2} On September 25, 1995, appellant filed an application for reopening his appeal before the court of appeals pursuant to App.R. 26(B), alleging ineffective assistance of appellate counsel. Appellant asserted that appellate counsel failed to raise specific instances of trial counsel’s ineffectiveness. However, the court of appeals denied the application on several grounds, including its finding that the issue of ineffective assistance of trial counsel was reviewed in appellant’s direct appeal and was found to be without merit. Therefore, the court of appeals held its prior decision to be *res judicata* on the issue of ineffective assistance of trial counsel. The court of appeals then reviewed the merits of appellant’s claim of ineffective assistance of appellate counsel, and denied the claim under the tests established in *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80

SUPREME COURT OF OHIO

L.Ed.2d 674, and *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373.
Appellant appeals that denial to this court.

Alan F. Sedlak, Pickaway County Assistant Prosecuting Attorney, for
appellee.

Ralph S. Silvestri, Jr., for appellant.

Per Curiam.

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

Judgment affirmed.

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