

1 The State of Ohio, Appellee, v. Sanders, Appellant.

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

3 *Appellate procedure -- Application for reopening appeal from*
4 *judgment and conviction based on claim of ineffective*
5 *assistance of appellate counsel -- Application denied when*
6 *applicant fails to establish the existence of a colorable claim of*
7 *ineffective assistance of appellate counsel.*

8 (No. 96-205--Submitted May 7, 1996--Decided June 19, 1996.)

9 Appeal from the Court of Appeals for Cuyahoga County, No. 67844.

10 Appellant, John Sanders, Jr., was convicted on two counts of
11 aggravated robbery, and sentenced to terms of imprisonment. Upon appeal,
12 the convictions were affirmed. *State v. Sanders* (May 18, 1995), Cuyahoga
13 App. No. 67844, unreported.

14 Subsequently, appellant filed an application for reopening before the
15 court of appeals pursuant to App. R. 26(B), alleging ineffective assistance
16 of appellate counsel. The court of appeals denied the application on
17 December 12, 1995, and held that the doctrine of *res judicata* prohibited the
18 reopening of his original appeal, because appellant could have raised the

1 issue of ineffective assistance of appellate counsel on direct appeal to this
2 court, but did not file such an appeal. This appeal followed.

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4 *Stephanie Tubbs Jones*, Cuyahoga County Prosecuting Attorney, and
5 *Sherry F. McCreary*, Assistant Prosecuting Attorney, for appellee.

6 *David H. Bodiker*, Ohio Public Defender, and *Timi J. Townsend*,
7 Assistant Public Defender, for appellant.

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9 *Per Curiam*. We affirm the judgment of the court of appeals denying
10 appellant's application for reopening. Appellant has failed to establish the
11 existence of a colorable claim of ineffective assistance of appellate counsel
12 under *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80
13 L.Ed.2d 674.

14 *Judgment affirmed.*

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

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