

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

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

3 *Appellate procedure -- App.R. 26(B) -- Application for reopening*
4 *appeal from judgment and conviction based on claim of*
5 *ineffective assistance of appellate counsel -- Application*
6 *denied when not timely filed.*

7 (No. 95-1557--Submitted October 24, 1995--Decided January 10,
8 1996.)

9 Appeal from the Court of Appeals for Montgomery County, No.
10 13440.

11 Appellant, Thomas E. Everette, Jr., was convicted of felonious assault
12 and aggravated robbery, each with a gun specification. He was sentenced
13 accordingly. The court of appeals affirmed the convictions. *State v.*
14 *Everette* (Aug. 6, 1993), Montgomery App. No. 13440, unreported.

15 On May 31, 1995, appellant filed with the court of appeals an
16 application titled, "Application for Reconsideration/Reopening Pursuant to
17 Rule 26 of Appellate Procedure." Since the appellant argued that his
18 appellate counsel was ineffective and attempted to offer a good-cause
19 reason for his untimely filing, the court of appeals considered his

1 application as one for reopening pursuant to App.R. 26(B). In the
2 application, appellant stated as good cause for failure to file the application
3 within ninety days after journalization of the appellate judgment sought to
4 be reopened, as required by App.R. 26(B)(1), that he had “great difficulties”
5 in finding out that his conviction had been affirmed on appeal and “great
6 difficulties” in obtaining a trial transcript. The court of appeals found that
7 appellant had filed a *pro se* appeal to this court on October 22, 1993,
8 showing that he did have knowledge of the August 6, 1993 judgment
9 affirming his conviction, and that he failed to substantiate his claim of
10 difficulty in obtaining a transcript. It, therefore, denied the application to
11 reopen as untimely. This appeal followed.

12 *Thomas E. Everette, Jr., pro se.*

13 *Per Curiam.* We affirm the decision of the court of appeals for the
14 reasons stated in its judgment entry.

15 *Judgment affirmed.*

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

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