

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

2 [Cite as *State v. Green* (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 no*
6 *colorable claim of ineffective assistance of appellate counsel*
7 *shown.*

8 (No. 95-1451--Submitted November 7, 1995--Decided January 10,
9 1996.)

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

11 14371.

12 Appellant, Grady G. Green II, was convicted of felonious assault,
13 aggravated burglary, and two firearm specifications. He was sentenced to
14 seven to twenty-five years on the aggravated burglary count and seven to
15 fifteen years on the felonious assault count. These sentences were to be
16 served concurrently. He was also sentenced to two concurrent three-year
17 sentences on the firearm specifications, to run consecutively to the
18 aggravated burglary and felonious assault sentences. The court of appeals

1 affirmed the convictions and sentences. *State v. Green* (Sept. 23, 1994),
2 Montgomery App. No. 14371, unreported, 1994 WL 514948.

3 On January 5, 1995, appellant filed an application to reopen his
4 appeal under App.R. 26(B), alleging ineffective assistance of appellate
5 counsel for failing to argue that (1) appellant's convictions for felonious
6 assault and aggravated burglary should have been merged under R.C.
7 2941.25(A); (2) appellant should have been convicted of only one firearm
8 specification under R.C. 2929.71(B); (3) admission of appellant's prior bad
9 acts constituted reversible error; and (4) the court erred by admitting a
10 statement by the victim. The court of appeals denied the application,
11 holding that (1) appellant's felonious assault and aggravated burglary
12 offenses were committed separately; (2) although it agreed that appellant
13 should have been convicted of only one firearm specification, the error was
14 harmless because the two firearm specifications were ordered to be served
15 concurrently; (3) the evidence of prior bad acts was admissible; and (4) not
16 challenging the victim's statement may have been a strategic choice. This
17 appeal followed.

