

**THE STATE OF OHIO, APPELLEE, v. O'NEAL, APPELLANT.**

**[Cite as *State v. O'Neal*, 2000-Ohio-281.]**

*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 demonstrate that appellate counsel performed in a deficient manner or that any alleged deficiency prejudiced the outcome of the appeal.*

(No. 98-1735—Submitted January 11, 2000—Decided March 8, 2000.)

APPEAL from the Court of Appeals for Hamilton County, No. C-960392.

---

{¶ 1} Appellant, James Derrick O'Neal, was convicted of aggravated burglary and the aggravated murder of his wife, Carol O'Neal, and sentenced to death. The court of appeals affirmed the convictions and sentence. *State v. O'Neal* (Dec. 12, 1997), Hamilton App. No. C-960392, unreported, 1997 WL 770162. On direct appeal as of right, we also affirmed O'Neal's convictions for aggravated murder and aggravated burglary, and we affirmed the death penalty. *State v. O'Neal* (2000), 87 Ohio St.3d 402, 721 N.E.2d 73.

{¶ 2} Following the court of appeals' decision in December 1997, O'Neal filed a timely application for reopening with the court of appeals pursuant to App.R. 26(B) and *State v. Murnahan* (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204, alleging ineffective assistance of appellate counsel before that court. The court of appeals concluded that O'Neal failed to demonstrate "that appellate counsel performed in a deficient manner \* \* \* or that any alleged deficiency prejudiced the outcome of the appeal." O'Neal now appeals that decision to this court.

---

SUPREME COURT OF OHIO

*Michael K. Allen*, Hamilton County Prosecuting Attorney, and *William E. Breyer*, Assistant Prosecuting Attorney, for appellee.

*John J. Gideon*, for appellant.

---

***Per Curiam.***

{¶ 3} We affirm the judgment of the court of appeals for the reasons set forth in its entry dated July 9, 1998.

*Judgment affirmed.*

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

---