

[Cite as *State v. Rozanski*, 2002-Ohio-5501.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio

Court of Appeals No. S-02-007

Appellee

Trial Court No. 01-CR-685

v.

David W. Rozanski

DECISION AND JUDGMENT ENTRY

Appellant

Decided: October 8, 2002

* * * * *

Jeffrey M. Gamso, for appellant.

* * * * *

PIETRYKOWSKI, P.J.

{¶1} This case is before the court on appellant David Rozanski's motion to reopen his appeal pursuant to App.R. 26(B). Appellant's appeal was dismissed by this court on July 9, 2002 when his appointed counsel failed to file a brief. For the reasons that follow, we find the application well-taken.

{¶2} App.R. 26(B) provides, in pertinent part:

{¶3} "(1) A defendant in a criminal case may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel. An application for reopening shall be filed in the court of appeals where the appeal was decided within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time.

{¶4} "***.

{¶5} "(5) An application for reopening shall be granted if there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal.

{¶6} "***."

{¶7} See, also, *State v. Murnahan* (1992), 63 Ohio St.3d 60, paragraph three of the syllabus.

{¶8} In the instant case, where appointed appellate counsel failed to file a brief on appellant's behalf, we find that a genuine issue exists as to whether appellant was denied effective assistance of counsel.

{¶9} Upon consideration, we find appellant's application for reopening well-taken and it is granted. Appellant is ordered to file a brief within 20 days of the date of this entry.

APPLICATION GRANTED.

State of Ohio v.
David W. Rozanski
C.A. No. S-02-007

Peter M. Handwork, J.

Melvin L. Resnick, J.

Mark L. Pietrykowski, P.J.
CONCUR.

JUDGE

JUDGE

JUDGE