

[Cite as *State v. Fuller*, 2002-Ohio-2232.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 63987 & 63988

STATE OF OHIO	:	
	:	JOURNAL ENTRY
PLAINTIFF-APPELLEE	:	
	:	AND
v.	:	
	:	OPINION
MICHAEL FULLER	:	
	:	
DEFENDANT-APPELLANT	:	
	:	

DATE OF JOURNALIZATION	<u>MAY 8, 2002</u>
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CHARACTER OF PROCEEDING:	Application for Reopening, Motion No. 37241, Lower Court No. CR-276787, Common Pleas Court.
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JUDGMENT:	DENIED.
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APPEARANCES:

For Plaintiff-appellee:	WILLIAM D. MASON Cuyahoga County Prosecutor STEVEN A. DEVER Assistant County Prosecutor The Justice Center 1200 Ontario Street Cleveland, Ohio 44113
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For Defendant-appellant:	PAUL F. MARKSTROM, Esq. 208 Ohio Savings Building 22255 Center Ridge Road Rocky River, Ohio 44116
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SWEENEY, JAMES D., P.J.:

{¶1} On April 8, 2002, the defendant, Michael Fuller, filed a second application for reopening pursuant to App. R. 26(B). He is again attempting to reopen the appellate judgment that was rendered by this court in *State v. Fuller* (Oct. 28, 1993), Cuyahoga App. Nos. 63987 and 63988. In that opinion, we affirmed defendant's convictions for two counts of rape with specifications; one count of aggravated burglary; one count of felonious assault with specifications, one count of attempted felonious assault; one count of aggravated burglary with specifications; one count of kidnaping with specifications; one count of trespassing; and one count of assault. Sua sponte, we decline to reopen Fuller's original appeal.

{¶2} The record indicates that Mr. Fuller filed his first application to reopen pursuant to App.R. 26(B) on August 15, 1994. This court subsequently denied that application on October 14, 1994, finding that the ineffectiveness of trial counsel is not a cognizable claim under App.R. 26(B); and because appellate counsel cannot be expected to raise his own ineffectiveness on appeal.

{¶3} Mr. Fuller's second application is not well taken because there is no right to file successive applications for reopening pursuant to App.R. 26(B). *State v. Richardson*, 74 Ohio St.3d 235, 1996-Ohio-258, 658 N.E.2d 273; *State v. Cheren*, 73 Ohio St.3d 137,

1995-Ohio-140, 652 N.E.2d 707; *State v. Peeples*, 73 Ohio St.3d 149, 1995-Ohio-36, 652 N.E.2d 717; *State v. Towns* (Nov. 3, 1997), Cuyahoga App. No. 71244, reopening disallowed, (Apr. 22, 2002), Motion No. 37343; *State v. Sherrills* (Sept. 18, 1997), Cuyahoga App. No. 56777, reopening disallowed, (Mar. 6, 2001), Motion No. 24318; and *State v. Stewart* (Nov. 19, 1998), Cuyahoga App. No. 73255, reopening disallowed, (Nov. 2, 2001), Motion No. 32159.

{¶4} Furthermore, the doctrine of Res Judicata prohibits this court from considering Mr. Fuller's second application for reopening because his new claims of ineffective assistance of appellate counsel could have been raised in his initial application to reopen. *Stewart; Fuller; State v. Phelps* (Sept. 30, 1996), Cuyahoga App. No. 69157, second reopening disallowed (Nov. 30, 1998), Motion No. 79992; and *State v. Brantley* (June 29, 1992), Cuyahoga App. No. 62412, second reopening disallowed (May 22, 1996), Motion No. 72855.

{¶5} Accordingly, Mr. Fuller's second application for reopening is denied.

ANNE L. KILBANE, J., and

ANN DYKE, J., CONCUR.

JAMES D. SWEENEY
PRESIDING JUDGE