

[Cite as *State v. Dimitrov*, 2002-Ohio-2350.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 76986

STATE OF OHIO	:	
Plaintiff-Appellee	:	JOURNAL ENTRY
v.	:	AND
KRISTIAN DIMITROV	:	OPINION
Defendant-Appellant	:	

DATE OF JOURNALIZATION: MAY 13, 2002

CHARACTER OF PROCEEDING: Application for Reopening,  
Motion No. 28350.  
Lower Court No. CR-357792,  
Common Pleas Court.

JUDGMENT: Application Denied.

APPEARANCES:

For Plaintiff-Appellee:

DAVID BODIKER, ESQ.  
STATE PUBLIC DEFENDER  
JANINE S. ASHANIN, ESQ.  
ASST. STATE PUBLIC DEFENDER  
8 EAST LONG STREET, 11<sup>TH</sup> FLOOR THE JUSTICE CENTER  
COLUMBUS, OHIO 43215-2998

For Defendant-Appellant:

WILLIAM D. MASON, ESQ.  
CUYAHOGA COUNTY PROSECUTOR  
SHERRY F. McCREARY, ESQ.  
ASST. COUNTY PROSECUTOR  
1200 ONTARIO STREET  
CLEVELAND, OHIO 44113

KARPINSKI, A.J.:

{¶1} Kristian Dimitrov has filed an application for reopening pursuant to App.R. 26(B). Dimitrov is attempting to reopen the appellate judgment that was rendered by this Court in *State v. Dimitrov*, Cuyahoga App. No. 76986, 2001-Ohio-4133. On appeal, we affirmed Dimitrov's conviction for one count of burglary (R.C. 2911.12) and one count of possessing criminal tools (R.C. 2923.24). We decline to reopen Dimitrov's original appeal.

{¶2} In the case sub judice, we find that the doctrine of res judicata prevents this court from reopening Dimitrov's appeal. Res judicata will be applied to bar the further litigation of issues that were either raised or could have been raised through a prior appeal. See, generally, *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104. Claims of ineffective assistance of appellate counsel may be barred from further review by the doctrine of res judicata unless circumstances render the application of the doctrine unjust. *State v. Murnahan* (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204.

{¶3} Herein, Dimitrov possessed a prior opportunity to argue the claim of ineffective assistance of appellate counsel through an appeal to the Supreme Court of Ohio. Dimitrov, in fact, did file an appeal with the Supreme Court of Ohio on April 12, 2001, through counsel different than originally assigned for appeal to this court. Since the Supreme Court of Ohio dismissed Dimitrov's appeal

on June 27, 2001, the doctrine of res judicata now bars any further review of the claim of ineffective assistance of appellate counsel.

{¶4} We further find that the circumstances of this case do not render the application of the doctrine of res judicata unjust.

*State v. Terrell*, 72 Ohio St.3d 247, 1995-Ohio-54,648 N.E.2d 1353; *State v. Smith* (Jan. 29, 1996), Cuyahoga App. No. 68643, reopening disallowed (June 14, 1996), Motion No. 71793.

{¶5} Accordingly, Dimitrov's application for reopening is denied.

MICHAEL J. CORRIGAN, J., AND

ANNE L. KILBANE, J., CONCUR

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DIANE KARPINSKI  
ADMINISTRATIVE JUDGE