

THE STATE OF OHIO, APPELLEE, v. RICHARDSON, APPELLANT.

[Cite as *State v. Richardson* (1996), \_\_\_ Ohio St. 3d \_\_\_\_.]

*Appellate procedure — Application for reopening appeal from judgment and conviction based on claim of ineffective assistance of appellate counsel — Application denied when claim barred by res judicata.*

(No. 95-844 — Submitted September 12, 1995 — Decided January 10, 1996.)

APPEAL from the Court of Appeals for Cuyahoga County, No. 59803.

Appellant, Lemuel Richardson, was convicted of one count of aggravated burglary with specifications and one count of theft with specifications. Appellant's convictions were affirmed by the Eighth District Court of Appeals in *State v. Richardson* (Jan. 16, 1992), Cuyahoga App. No. 59803, unreported, 1992 WL 6051. Appellant then filed a *pro se* appeal to this court that was denied. *State v. Richardson* (1992), 65 Ohio St.3d 1465, 602 N.E.2d 1173.

On November 2, 1993, appellant filed an application for delayed reconsideration (treated as an application for reopening) in the court of appeals. The court of appeals denied the application, *State v. Richardson* (Sept, 20, 1994), Cuyahoga App. No. 59803, unreported, holding that appellant failed to establish good cause for not filing the application within ninety days of the decision in the direct appeal; that the claims were barred by *res judicata*; and, in any case, that the issues raised had no merit. It is undisputed that, on February 10, 1995, appellant filed a second application for reopening pursuant to App.R. 26(B). On March 20, 1995, the court of appeals denied the application, holding that the doctrine of *res judicata* applied. Appellant appeals that decision to this court.

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*Stephanie Tubbs Jones*, Cuyahoga County Prosecuting Attorney, and *Sherry F. McCreary*, Assistant Prosecuting Attorney, for appellee.

*David H. Bodiker*, Ohio Public Defender, and *Kort Gatterdam*, Assistant State Public Defender, for appellant.

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*Per Curiam.* We affirm the judgment of the court of appeals. We find no injustice in applying the doctrine of *res judicata* on these facts. Since the date of the appellate decision sought to be reopened, appellant has appealed directly to this court and filed one application for reopening. Neither App.R. 26(B) nor *State v. Murnahan* (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204, provides for second and subsequent applications for reopening. Therefore, the court of appeals did not err in finding that the matter of ineffective assistance of appellate counsel is now *res judicata*.

*Judgment affirmed.*

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