

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

State of Ohio

Court of Appeals No. WD-03-076

Appellee

Trial Court No. 03-CR-265

v.

Gerald Riley

DECISION AND JUDGMENT ENTRY

Appellant

Decided: January 11, 2006

* * * * *

David H. Bodiker, Ohio Public Defender, and Charles B. Clovis,
Assistant Public Defender, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This case is before the court upon an application for delayed reopening filed by appellant, Gerald Riley, from his conviction for aggravated burglary, a felony of the first degree, in the Wood County Court of Common Pleas. For the reasons that follow, we grant appellant's motion.

{¶ 2} On October 20, 2003, appellant, through appointed counsel, filed in this court an appeal of his conviction. Despite receiving six extensions, appellate counsel never filed a brief and we dismissed the appeal on July 2, 2004. We sent notice of the dismissal to appellant's counsel, the state of Ohio, and the trial court. According to sworn

statements in his application, appellant did not learn of the dismissal until after the expiration of the 90 days provided by App.R. 26(B) for filing an application for reopening. Appellant filed his application for delayed reopening on November 28, 2005. The state of Ohio did not oppose the motion.

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

{¶ 4} "(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.

{¶ 5} "* * *.

{¶ 6} "(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.

{¶ 7} "* * *."

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

{¶ 9} 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. See *State v. Embry*, 6th Dist. No. L-03-1114, 2005-Ohio-405. We also find that appellant has shown good cause for his untimely filing. *Id.*

{¶ 10} Upon due consideration, we grant appellant's motion for delayed reopening. Appellate counsel, Charles B. Clovis, Assistant State Public Defender, is ordered to file a brief on appellant's behalf within 30 days of the date of this order.

APPLICATION GRANTED.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Dennis M. Parish, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.