

OPINIONS OF THE SUPREME COURT OF OHIO

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The State of Ohio, Appellee, v. Slagle, Appellant.
[Cite as State v. Slagle (1995), 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 applicant fails to establish good cause for failing to file his application within ninety days after journalization of the court of appeals' decision, as required by App.R. 26(B)(2)(b), and applicant's failure to establish a colorable claim of ineffective assistance of appellate counsel.
(No 94-2207-- Submitted April 18, 1995 -- Decided July 19, 1995.)

Appeal from the Court of Appeals for Cuyahoga County, No. 55759.

Appellant, Billy Slagle, was convicted of aggravated murder, aggravated robbery, and aggravated burglary and sentenced to death. After a remand, the court of appeals affirmed the conviction and sentence. State v. Slagle (Sept. 26, 1991), Cuyahoga App. No. 55759, unreported, 1991 WL 191836. We also affirmed when he appealed to this court as of right. State v. Slagle (1992), 65 Ohio St.3d 597, 605 N.E.2d 916, certiorari denied (1993), Slagle v. Ohio 510 U.S. , 114 S.Ct. 106, 126 L.Ed.2d 72. According to the parties, Slagle petitioned the trial court in July 1994, for postconviction relief, and that petition is still pending.

In August 1994, Slagle filed with the court of appeals an application to reopen his appeal under App.R. 26(B), alleging ineffective assistance of his appellate counsel. The court of appeals denied the application, finding that appellant had failed to establish good cause for not filing the application

to reopen within ninety days from the journalization of the appellate judgment, as required by App.R. 26(B)(2)(b). The court of appeals also held that appellant's seven proposed assignments of error failed to establish a colorable claim of ineffective assistance of appellate counsel. Additionally, Slagle failed to demonstrate that circumstances render the application of res judicata to his prayer for reopening unjust. Appellant appeals the denial to this court.

Stephanie Tubbs Jones, Cuyahoga County Prosecuting Attorney, and Karen L. Johnson, Assistant Prosecuting Attorney, for appellee.

David H. Boidiker, Ohio Public Defender, Linda E. Prucha and Pamela Prude-Smithers, Assistant Public Defenders, for appellant.

Per Curiam. We affirm the decision of the court of appeals for the reasons stated in its opinion.

J

Judgment affirmed.

Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.