

1 The State of Ohio, Appellee, v. Peeples, Appellant.

2 [Cite as State v. Peeples (1995), ____ Ohio St.3d ____.]

3 *Appellate procedure -- Application for reopening appeal from*
4 *judgment and conviction based on claim of ineffective*
5 *assistance of appellate counsel -- Application denied when no*
6 *colorable claim of ineffective assistance of appellate counsel*
7 *stated.*

8 (No. 95-740 -- Submitted July 26, 1995 -- Decided December 6,

9 1995.)

10 Appeal from the Court of Appeals for Pickaway County, No. 92 CA

11 7.

12 Appellant, Kavin L. Peeples, was convicted of aggravated murder in

13 violation of R.C. 2903.01(A) with specifications pursuant to R.C. 2929.04

14 (aggravated murder committed while the defendant was an inmate in a

15 detention facility). The Court of Appeals for Pickaway County affirmed the

16 judgment of the trial court. *State v. Peeples* (1994), 94 Ohio App.3d 34,

17 640 N.E.2d 208.

18 On November 10, 1994, appellant filed an application requesting

19 delayed reconsideration. The court of appeals treated this as an application

1 for reopening pursuant to App. R. 26(B), and found that, although appellant
2 had established good cause for not filing the application within the ninety
3 days required under App. R. 26(B), he had failed to state a colorable claim
4 of ineffective assistance of appellate counsel. Thus, the appellate court
5 denied appellant's application for delayed reconsideration, and this appeal
6 followed.

7 *Kavin Peeples, pro se.*

8 *Per Curiam.* In his application to reopen, appellant raised five
9 separate issues regarding appellate counsel's ineffectiveness. Each issue
10 involved appellant's alleged mental incapacity. However, the court of
11 appeals found that "[t]he issue of Peeples's mental incapacity was previously
12 and properly raised on direct appeal." Specifically, the court of appeals
13 found that appellant's problem was not his appellate counsel's performance,
14 but the fact that his motion to suppress his confession to the murder was
15 denied at trial. We concur.

16 Accordingly, we affirm the decision of the court of appeals for the
17 reasons stated in its opinion.

18 *Judgment affirmed.*

1 MOYER, C.J., DOUGLAS, WRIGHT, RESNICK, F.E. SWEENEY, PFEIFER

2 and COOK, JJ., CONCUR.

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