

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

2 [Cite as *State v. Sibert* (1996), \_\_\_\_\_ 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*  
6 *applicant not prejudiced by counsel's failure to file a motion to*  
7 *suppress certain incriminating statements made to the police.*  
8 (No. 95-1396--Submitted September 26, 1995--Decided January 17,  
9 1996.)

10 Appeal from the Court of Appeals for Adams County, No. 93CA562.

11 Appellant, Jeffrey B. Sibert, was convicted of three counts of rape  
12 with force specifications and sentenced to two consecutive terms of life  
13 imprisonment and to a third such term concurrent with the other two. The  
14 convictions were affirmed on appeal. *State v. Sibert* (1994), 98 Ohio  
15 App.3d 412, 648 N.E.2d 861.

16 Subsequently, appellant filed an application to reopen his appeal  
17 pursuant to App.R. 26(B), alleging ineffective assistance of appellate  
18 counsel because appellate counsel did not raise the issue that as trial counsel  
19 he failed to file a motion to suppress certain incriminating statements

1 appellant had made to a police officer. The court of appeals examined the  
2 record and, *inter alia*, held that even if it had been error not to file a motion  
3 to suppress, appellant had not been prejudiced because the three victims all  
4 testified at trial.

5 Appellant appeals from the denial of his application to reopen.

6 *Greg Carroll*, Adams County Prosecuting Attorney, for appellee.

7 *Jeffrey B. Sibert, pro se.*

8 *Per Curiam.* The judgment of the court of appeals is affirmed for the  
9 reason stated above. On appeal, appellant alleges failure of trial counsel to  
10 present the issue of his mental competence. Apparently, the issue was not  
11 raised in the court of appeals; therefore, we will not consider it for the first  
12 time on appeal. *Zakany v. Zakany* (1984), 9 Ohio St.3d 192, 193, 9 OBR  
13 505, 506-507, 459 N.E.2d 870, 872.

14 *Judgment affirmed.*

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

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