

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

2 [Cite as State v. Cook (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 fails to establish good cause for failure to file the*
7 *motion within ninety days from journalization of the appellate*
8 *judgment, as required by App.R. 26(B)(2)(b).*

9 (No. 95-1762--Submitted December 5, 1995--Decided February 14,
10 1996.)

11 Appeal from the Court of Appeals for Hamilton County, No. C-
12 900676.

13 Appellant, Derrick Cook, was convicted of aggravated murder,
14 aggravated robbery and kidnapping, and sentenced to death in 1990. The
15 court of appeals affirmed the convictions and sentence. *State v. Cook* (Apr.
16 8, 1992), Hamilton App. No. C-900676, unreported, 1992 WL 74199. On
17 direct appeal as of right, we also affirmed. *State v. Cook* (1992), 65 Ohio
18 St.3d 516, 605 N.E.2d 70. Subsequently, Cook's petitions for post-
19 conviction relief were dismissed, and the judgment of dismissal was

1 affirmed by the court of appeals. *State v. Cook* (Dec. 29, 1995), Hamilton
2 App. No. C-950090, unreported.

3 It is undisputed that in April 1995, Cook filed with the court of
4 appeals an application to reopen his appeal under App.R. 26(B) and *State v.*
5 *Murnahan* (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204, alleging ineffective
6 assistance of his appellate counsel. The court of appeals denied the
7 application, finding that appellant had failed to establish good cause for not
8 filing the application to reopen within ninety days from the journalization of
9 the appellate judgment, as required by App.R. 26(B)(2)(b).

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11 *Joseph T. Deters*, Hamilton County Prosecuting Attorney, and
12 *Christian J. Schaefer*, Assistant Prosecuting Attorney, for appellee.

13 *David H. Bodiker*, Ohio Public Defender, and *John B. Heasley*,
14 Assistant Public Defender, for appellant.

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

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Judgment affirmed.

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

2 JJ., concur.

3 WRIGHT, J., dissents.

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