

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

2 [Cite as *State v. Benner* (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 failing to file his*
7 *application within ninety days after journalization of the court*
8 *of appeals' decision affirming the conviction.*

9 (No. 95-2552--Submitted May 21, 1996--Decided July 24, 1996.)

10 APPEAL from the Court of Appeals for Summit County, No. 12664.

11 Appellant, Glenn L. Benner II, was convicted of the aggravated
12 murders of two persons with death-penalty specifications, the attempted
13 aggravated murders of two others, as well as six counts of rape, three counts
14 of kidnapping, aggravated burglary, gross sexual imposition, and attempted
15 rape. The trial court sentenced Benner to death for the aggravated murders,
16 and the court of appeals affirmed the convictions and sentence. *State v.*
17 *Benner* (July 29, 1987; July 22, 1987), Summit App. No. 12664, unreported,
18 1987 WL 15103, 15078. On direct appeal as of right, we also affirmed.
19 *State v. Benner* (1988), 40 Ohio St.3d 301, 533 N.E.2d 701, certiorari

1 denied sub nom. *Benner v. Ohio* (1990), 494 U.S. 1090, 110 S.Ct. 1834, 108
2 L.Ed.2d 962.

3 On June 30, 1993, Benner filed an application for delayed
4 reconsideration with the court of appeals pursuant to *State v. Murnahan*
5 (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204, alleging ineffective assistance
6 of appellate counsel. The court of appeals noted that Benner’s “application
7 was not filed until approximately six years after this court affirmed his
8 conviction and sentence.” Further, the court of appeals found that Benner
9 “has failed to demonstrate good cause why his application was not timely
10 filed. Inasmuch as appellant failed to articulate ‘particular circumstances’
11 establishing good cause for the delay ***, his application is denied.”
12 Benner now appeals that denial to this court.

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14 *Maureen O’Connor*, Summit County Prosecuting Attorney, and
15 *William D. Wellemeyer*, Assistant Prosecuting Attorney, for appellee.

16 *David H. Bodiker*, Ohio Public Defender, *Randall L. Porter* and
17 *Stephen Hardwick*, Assistant Public Defenders, for appellant.

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