

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

2 [Cite as *State v. Howe* (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 no*  
6 *genuine issue is raised as to whether applicant was denied*  
7 *the effective assistance of appellate counsel -- Petition for*  
8 *postconviction relief -- Allegation that co-defendants were*  
9 *coerced into falsely implicating petitioner in crimes for which*  
10 *he was convicted -- Petition denied when allegations of*  
11 *coerced testimony were satisfactorily rebutted by trial record.*

12 (Nos. 96-468 and 96-676--Submitted May 21, 1996--Decided August  
13 21, 1996.)

14 APPEALS from the Court of Appeals for Montgomery County, Nos.  
15 13969 and 15139.

16 In March 1993, appellant Weston Howe, Jr., was convicted of  
17 aggravated murder, aggravated robbery, aggravated burglary and having a  
18 weapon under disability, and was sentenced to prison. Upon appeal, the  
19 convictions were affirmed. *State v. Howe* (Sept. 30, 1994), Montgomery  
20 App. No. 13969, unreported.

1           In case No. 96-468, on December 21, 1994, appellant filed an  
2 application to reopen his appeal pursuant to App.R. 26(B), alleging  
3 ineffective assistance of appellate counsel. However, the court of appeals  
4 was unable to rule on the application because pending appeals before this  
5 court divested it of its jurisdiction under S.Ct.Prac.R. II (2)(D)(1). See *State*  
6 *v. Howe* (1995), 73 Ohio St.3d 35, 652 N.E.2d 193. Eventually, the court of  
7 appeals obtained jurisdiction to rule on appellant's App.R. 26(B)  
8 application. On January 24, 1996, the court of appeals denied the  
9 application, finding no genuine issue as to whether appellant was denied the  
10 effective assistance of appellate counsel. Appellant appeals that denial to  
11 this court.

12           With respect to case No. 96-676, on July 8, 1994, appellant filed a  
13 petition for postconviction relief before the court of common pleas. The  
14 petition was supported by an affidavit from a co-defendant, alleging that  
15 appellant's co-defendants were coerced into falsely implicating appellant in  
16 the crimes for which he was convicted. After reviewing the record of the  
17 criminal proceeding involving appellant and his co-defendants, the trial  
18 court dismissed the postconviction relief petition without a hearing.

