

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

2 [Cite as *State v. Durr* (1997), _____ 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 the existence of a colorable claim of*
7 *ineffective assistance of appellate counsel -- Application*
8 *denied when untimely and barred by res judicata.*

9 (No. 96-1581--Submitted December 11, 1996--Decided February 19,
10 1997.)

11 Appeal from the Court of Appeals for Cuyahoga County, No. 57140.

12 Appellant, Darryl Durr, was convicted of one count of aggravated
13 murder with specifications, and of kidnapping, aggravated robbery, and
14 rape, each with a violence specification. He was sentenced to death. Upon
15 appeal, the court of appeals affirmed the convictions and sentences. *State v.*
16 *Durr* (Dec. 7, 1989), Cuyahoga App. No. 57140, unreported, 1989 WL
17 147626. This court also affirmed the convictions and sentences. *State v.*
18 *Durr* (1991), 58 Ohio St.3d 86, 568 N.E.2d 674.

19 Appellant filed an application with the court of appeals pursuant to
20 *State v. Murnahan* (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204, for delayed

1 reconsideration, alleging ineffective assistance of appellate counsel. The
2 court of appeals denied the application for lack of a colorable claim. *State*
3 *v. Durr* (July 6, 1994), Cuyahoga App. No. 57140, unreported. Appellant's
4 further appeal to this court was affirmed. *State v. Durr* (1994), 71 Ohio
5 St.3d 395, 643 N.E.2d 1147.

6 Subsequently, on May 10, 1995, appellant filed an application for
7 reopening in the court of appeals pursuant to App. R. 26(B), again alleging
8 ineffective assistance of appellate counsel. The court of appeals denied the
9 application finding it, *inter alia*, to be untimely and barred by *res judicata*.
10 This appeal followed.

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12 *Stephanie Tubbs Jones*, Cuyahoga County Prosecuting Attorney, and
13 *Carmen M. Marino*, Assistant Prosecuting Attorney, for appellee.

14 *David H. Bodiker*, Ohio Public Defender, and *William S. Lazarow*,
15 Assistant Public Defender, for appellant.

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17 *Per Curiam*. We affirm the judgment of the court of appeals denying
18 appellant's application for reopening. Appellant has failed to establish the

1 existence of a colorable claim of ineffective assistance of appellate counsel
2 under *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80
3 L.Ed.2d 674. We further reject appellant's propositions of law raised before
4 this court for the same reasons articulated by the court of appeals.

5 *Judgment affirmed.*

6 MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK
7 and LUNDBERG STRATTON, JJ., concur.

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