The State of Ohio, Appellee, v. Colombo, Appellant.

[Cite as State v. Colombo (1995), _____Ohio St.3d _____ .]

Appellate procedure -- Application for reopening appeal from judgment and conviction based on claim of ineffective assistance of appellate counsel -- Application denied when applicant fails to show good cause for not filing his application in a timely manner, when no colorable claim of ineffective assistance of appellate counsel is stated, and when re judicata bars consideration of the application.

(No. 95-652--Submitted July 12, 1995 -- Decided August 23, 1995.)

Appeal from the Court of Appeals for Cuyahoga County, No. 52715.

Appellant, Anthony Colombo, was convicted of murder with a firearms specification, carrying a concealed weapon, and felonious assault with a firearms specification and sentenced accordingly. The court of appeals affirmed his convictions and sentence. *State v. Colombo* (Oct. 7, 1987), Cuyahoga App. No. 52715, unreported, 1987 WL 17890, appeal dismissed (Apr. 4, 1988), case No. 87-2071.

On August 25, 1994, Colombo filed with the court of appeals an application to reopen his appeal under App.R. 26(B), alleging ineffective

assistance of his appellate counsel. The court of appeals denied the application, finding that appellant had failed to establish good cause for not filing his application in a timely manner. Further, the court of appeals held that *res judicata* bars consideration of this application for reopening, since Colombo could have raised these issues in his previous *pro se* direct appeal to the Supreme Court. The court of appeals also found the arguments asserted by Colombo not sufficient to establish a colorable claim of ineffective assistance of appellate counsel. Colombo now appeals the denial to this court.

Stephanie Tubbs Jones, Cuyahoga County Prosecuting Attorney, and *Diane Smilanick*, Assistant Prosecuting Attorney, for appellee.

David L. Doughten for appellant

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

Judgment affirmed.

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