

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

2 [Cite as State v. Dever (1995), Ohio St.3d .]

3 *Appellate procedure -- Application for reopening appeal from judgment*
4 *and conviction based on claim of ineffective assistance of appellate*
5 *counsel -- Application denied when applicant fails to establish good*
6 *cause for failure to file the motion within ninety days from*
7 *journalization of the appellate judgment, as required by App.R.*
8 *26(B).*

9 (No. 95-831--Submitted July 26, 1995 -- Decided October 11, 1995.)

10 Appeal from the Court of Appeals for Hamilton County, No. C-
11 880712.

12 Appellant, Frederick M. Dever, Jr., was convicted of rape. The court
13 of appeals affirmed the conviction. State v. Dever (Jan. 31, 1990), Hamilton
14 App. No. C-880712, unreported 1990 WL 6405. We overruled his motion
15 for leave to appeal. *State v. Dever* (1990), 52 Ohio St.3d 701, 556 N.E.2d
16 526. The United States Supreme Court granted certiorari, vacated the
17 judgment and remanded the case to the court of appeals. Dever v. Ohio
18 (1990), 498 U.S. 1009, 111 S. Ct. 575, 112 L. Ed.2d 581. The court of
19 appeals reversed the decision of the trial court. The state appealed to this
20 court, and we reversed the judgment of the court of appeals and reinstated

1 the conviction and sentence. State v. Dever (1992), 64 Ohio St. 3d 401, 596
2 N.E.2d 436.

3 It is undisputed that in February 1995, Dever filed with the court of
4 appeals an application to reopen his appeal under App.R. 26(B), alleging
5 ineffective assistance of his appellate counsel. The court of appeals denied
6 the application, finding that appellant had failed to establish good cause for
7 not filing the application to reopen within ninety days from the
8 journalization of the appellate judgment, as required by App.R. 26(B)(2)(b).

9 The court of appeals also held that the judgment Dever was seeking to open
10 had been rendered a nullity by the United States Supreme Court and was
11 therefore impossible to reopen.

12 Appellant appeals the denial to this court.

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

16 *Frederick M. Dever, Jr.*, *pro se*.

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

Judgment affirmed.

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