

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

[Cite as *State v. Foster* (1996), _____ 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 demonstrate genuine issue as to whether he was deprived of the effective assistance of counsel on appeal -- App.R. 26(B)(5).

(No. 95-2631--Submitted April 15, 1996--Decided June 5, 1996.)

APPEAL from the Court of Appeals for Muskingum County, No. CT

94-29.

Appellant, William H. Foster, was convicted of the charges of murder and aggravated assault, both with gun specifications, and sentenced to prison. In June 1995, the court of appeals affirmed the trial court's judgment. *State v. Foster* (June 14, 1995), Muskingum App. No. 94-29, unreported, 1995 WL 495497, appeal dismissed (1995), 74 Ohio St.3d 1455, 656 N.E.2d 950.

Appellant also filed with the court of appeals an application to reopen his appeal under App.R. 26(B), alleging ineffective assistance of appellate counsel. The court of appeals, *inter alia*, held that appellant "failed to

demonstrate that his appellate counsel's performance was deficient," and denied appellant's application to reopen his appeal. Appellant appeals that denial to this court.

Mark C. Fleegle, Muskingum County Prosecuting Attorney, for appellee.

William H. Foster, pro se.

Per Curiam. We affirm the judgment of the court of appeals, since appellant has failed to demonstrate "a genuine issue as to whether *** [he] was deprived of the effective assistance of counsel on appeal." App.R. 26(B)(5).

Judgment affirmed.

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