

[Cite as *State v. Perdue*, 2018-Ohio-252.]
STATE OF OHIO, MAHONING COUNTY

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STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO)

PLAINTIFF-APPELLEE

VS.

CLINTON PERDUE

DEFENDANT-APPELLANT)

CASE NO. 16 MA 0156

OPINION

CHARACTER OF PROCEEDINGS:

Appellant's Application for
Reconsideration Pursuant to App.R.
26(A)(1)

JUDGMENT:

Application Denied.

APPEARANCES:

For Plaintiff-Appellee:

Atty. Paul J. Gains
Mahoning County Prosecutor
Atty. Ralph M. Rivera
Assistant Prosecuting Attorney
21 West Boardman Street, 6th Floor
Youngstown, Ohio 44503

For Defendant-Appellant:

Clinton Perdue, *Pro se*
#217-703
Trumbull Correctional Institution
P.O. Box 901
Leavittsburg, Ohio 44430

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: January 19 2018

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PER CURIAM.

{¶1} Appellant Clinton Perdue requests reconsideration of our Opinion in *State v. Perdue*, 7th Dist. No. 16 MA 0156, 2017-Ohio-7586, pursuant to App.R. 26(A). Appellant argues that his sentence is not authorized by statute, and is void. He also argues that he was improperly charged with aggravated felony murder because his victim was not killed. As Appellant's motion is based on mere disagreement with our Opinion, and this does not provide appropriate grounds to support an application for reconsideration, the motion is denied.

{¶2} On September 22, 1988, Appellant was one of several men who robbed an apartment. During the course of the robbery, three people were shot. Two of the victims subsequently died as a result of their injuries. On October 11, 1988, Appellant was indicted on two counts of aggravated murder, two counts of aggravated robbery, and one count of attempted aggravated murder. Appellant was also indicted on five attendant firearm specifications. Following a jury trial, Appellant was convicted on all counts. The trial court sentenced Appellant to life imprisonment for each of the aggravated murder counts, ten to twenty-five years on each of the robbery counts, and seven to twenty years for the attempted aggravated murder count. The trial court additionally sentenced him to three years per firearm specification.

{¶3} Appellant filed a series of motions in the trial court and various appeals. Relevant to this motion, on August 9, 2016 Appellant filed a document he titled "MOTION TO CORRECT AN ILLEGAL SENTENCE." He argued that his sentences on the aggravated murder counts were not authorized by statute. He also argued

that his sentence for attempted aggravated murder was improper, as attempted aggravated murder is not a qualifying offense forming the basis for a felony murder charge. We affirmed the trial court's denial of his motion in *State v. Perdue*, 7th Dist. 16 MA 0156, 2017-Ohio-7586. It is from this Opinion that Appellant seeks reconsideration.

The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been.

Columbus v. Hodge, 37 Ohio App.3d 68, 523 N.E.2d 515 (10th Dist.1987), paragraph one of the syllabus.

{¶4} App.R. 26(A)(1)(a) states, in relevant part: “[a]pplication for reconsideration of any cause or motion submitted on appeal shall be made in writing no later than ten days after the clerk has both mailed to the parties the judgment or order in question and made a note on the docket of the mailing as required by App. R. 30(A).”

{¶5} Appellant's judgment was mailed to him and a note was placed on the docket on September 8, 2017. Thus, a timely application would have been filed no later than September 18, 2017. However, Appellant did not file his motion until September 19, 2017, one day after the deadline for a timely application.

{¶6} Pursuant to App.R. 14(B), an “enlargement of time to file an application for reconsideration or for en banc consideration pursuant to App.R. 26(A) shall not be granted except on a showing of extraordinary circumstances.” Appellant does not provide a reason for his untimeliness.

{¶7} Regardless, Appellant merely repeats the same arguments he made in his appellate brief and fails to raise an issue that was either not considered at all or was not fully considered by this Court. “Reconsideration motions are rarely considered when the movant simply disagrees with the logic used and conclusions reached by an appellate court.” *State v. Himes*, 7th Dist. No. 08 MA 146, 2010-Ohio-332, ¶ 4, citing *Victory White Metal Co. v. Motel Syst.*, 7th Dist. No. 04 MA 245, 2005-Ohio-3828; *Hampton v. Ahmed*, 7th Dist. No. 02 BE 66, 2005-Ohio-1766. It is apparent from Appellant’s application that he merely disagrees with the decision of and logic used by this Court.

{¶8} Again, in order to prevail on an application for reconsideration, an appellant must demonstrate an obvious error in our decision or that he raised an issue that was either not dealt with or was not fully considered. Mere disagreement with this Court’s logic and conclusions does not support a motion for reconsideration. Accordingly, Appellant’s application for reconsideration is denied.

Waite, J., concurs.

Donofrio, J., concurs.

DeGenaro, J., concurs.