

[Cite as *Cleveland v. Zingale*, 2018-Ohio-1189.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105763

CITY OF CLEVELAND

PLAINTIFF-APPELLEE

vs.

LINDA L. ZINGALE

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. 2016 TRC 025061
Application for Reopening
Motion No. 512599

RELEASE DATE: March 28, 2018

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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PATRICIA ANN BLACKMON, J.:

{¶1} Linda Zingale has filed a timely application for reopening pursuant to App.R. 26(B). Zingale is attempting to reopen the appellate judgment, rendered in *Cleveland v. Zingale*, 8th Dist. Cuyahoga No. 105763, 2017-Ohio-8232, that affirmed her conviction for the offenses of operating a vehicle while under the influence of alcohol or drugs and running a red light, but “remand[ed] the sentencing order for nunc pro tunc correction to conform to the sentence announced in open court.” We decline to reopen Zingale’s original appeal.

{¶2} In order to establish a claim of ineffective assistance of appellate counsel, Zingale is required to establish that the performance of her appellate counsel was deficient and the deficiency resulted in prejudice. *Strickland v. Washington*, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), *cert. denied*, 497 U.S. 1011, 110 S.Ct. 3258, 111 L.Ed.2d 767 (1990).

{¶3} In *Strickland*, the United States Supreme Court held that a court’s scrutiny of an attorney’s work must be highly deferential. The court further stated that it is all too tempting for a defendant to second-guess his attorney after conviction and that it would be too easy for a court to conclude that a specific act or omission was deficient, especially when examining the matter in hindsight. Thus, a court must indulge in a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the

circumstances, the challenged action might be considered sound trial strategy.
Strickland.

{¶4} Zingale has not raised a proposed assignment of error in support of her application for reopening. App.R. 26(B)(2)(c) requires that an application for reopening contain “[o]ne or more assignments of error or arguments in support of assignments of error that previously were not considered on the merits in the case by any appellate court or that were considered on an incomplete record because of appellate counsel’s deficient representation.” Zingale’s application for reopening contains no such assignment of error or argument. Without providing this court with an assignment of error or argument that addresses the claim of ineffective assistance of appellate counsel, it is not possible to evaluate an App.R. 26(B) application to reopen. *State v. Phillips*, 8th Dist. Cuyahoga No. 79192, 2001 Ohio App. LEXIS 5512 (Dec. 28, 2001), *reopening disallowed*, Motion No. 35540 (Mar. 8, 2002). Zingale has failed to demonstrate any claim of ineffective assistance of appellate counsel.

{¶5} Application for reopening is denied.

PATRICIA ANN BLACKMON, JUDGE

TIM McCORMACK, P.J., and
SEAN C. GALLAGHER, J., CONCUR