[Cite as *State v. Bradley*, 2020-Ohio-5617.]

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT**
**COUNTY OF CUYAHOGA**

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| STATE OF OHIO, | : | |
| Plaintiff-Appellee, | : | No. 108983 |
| v. | : | |
| KEVIN BRADLEY, | : | |
| Defendant-Appellant. | : | |

JOURNAL ENTRY AND OPINION

**JUDGMENT:** APPLICATION DENIED
**RELEASED AND JOURNALIZED:** December 9, 2020

Cuyahoga County Court of Common Pleas
Case No. CR-19-636657-A
Application for Reopening
Motion No. 541321

***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Callista Plemel, Assistant Prosecuting Attorney, *for appellee*.

Kevin Bradley, *pro se*.

PATRICIA ANN BLACKMON, J.:

**{¶ 1}** Kevin Bradley has filed a timely App.R. 26(B) application for reopening. Bradley is attempting to reopen the appellate judgment, rendered in *State v. Bradley*, 8th Dist. Cuyahoga No. 108983, 2020-Ohio-3460, that affirmed

his conviction in *State v. Bradley*, Cuyahoga C.P. No. CR-19-636657-A, for two counts of felonious assault in violation of R.C. 2903.11(A)(1), four counts of felonious assault in violation of R.C. 2903.11(A)(2), two counts of discharging a firearm upon or near a public road or highway in violation of R.C. 2923.162(A)(3), and multiple one- and three-year firearm specifications (R.C. 2941.141(A) and 2941.145(A)). We decline to reopen Bradley's appeal.

## I. Standard of Review Applicable to App.R. 26(B) Application for Reopening

**{¶ 2}** In order to establish a claim of ineffective assistance of appellate counsel, Bradley is required to establish that the performance of his 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}** Moreover, even if Bradley establishes that an error by his appellate counsel was professionally unreasonable, he must further establish that he was prejudiced; but for the unreasonable error there exists a reasonable probability that the results of his appeal would have been different. Reasonable probability, with regard to an application for reopening, is defined as a probability sufficient to undermine confidence in the outcome of the appeal. *State v. May*, 8th Dist. Cuyahoga No. 97354, 2012-Ohio-5504.

## II. Single Proposed Assignments of Error

**{¶ 5}** Bradley's sole proposed assignment of error is that:

> The trial court's imposition of an eleven year prison term is contrary to Ohio law and is clearly not supported by the trial record.

**{¶ 6}** Bradley, through his sole proposed assignment of error, argues that appellate counsel failed to argue on appeal the claim that the trial court's sentence of eleven years is contrary to law and unsupported by the record. On April 4, 2018, the trial court imposed a sentence of incarceration upon Bradley and held that:

> The court considered all required factors of the law. The court finds that prison is consistent with the purpose of R.C. 2929.11. The court imposes a prison sentence at the Lorain Correctional Institution of 11 year(s). In each of counts 6, 8, 9 and 10, the one year and three year firearm specs merge for purpose of sentencing. The state elects to sentence on the three year firearm spec in each of counts 6, 8, 9 and 10. The parties stipulate that counts 5 and 6 merge for purpose of sentencing. The state elects to sentence on count 6. (Fel-2, three year firearm spec). The parties stipulate that counts 3 and 4 merge and

> that counts 6 and 7 merge for purpose of sentencing. The state elects to sentence on Count 3 (Fel-2) and Count 6 (Fel-2, three year firearm spec). The parties stipulate that at a minimum, 2 of the three year firearm specs must run consecutively. R.C. 2929.14(b)(1)(g). Count 3, Fel-2: 5 years count 6, Fel-2: 3 year mandatory firearm specs to be served prior to and consecutive with 5 years on underlying offense. Count 8, Fel-2: 3 year mandatory firearm specs to be served prior to and consecutive with 5 years on underlying offense. Count 9, Fel-2: 3 year mandatory firearm specs to be served prior to and consecutive with 5 years on underlying offense. Count 10, Fel-2: 3 year mandatory firearm specs to be served prior to and consecutive with 5 years on underlying offense. 3 year firearm specs to be served concurrently in counts 8, 9 and 10 but consecutively to 3 year firearm spec on count 6. Defendant serving an aggregate 11 year sentence. 6 years are mandatory with no judicial release or reduction of sentence.

**{¶ 7}** The transcript of the sentencing hearing clearly demonstrates that the trial court considered the factors enumerated within R.C. 2929.11 (purposes and principles of felony sentencing) and 2929.12 (sentencing factors), and the trial court did not rely upon false or inaccurate information. In addition, the sentence imposed by the trial court fell within the applicable statutory ranges, as found in R.C. 2929.14(A)(2)(b) — 2, 3, 4, 5, 6, 7, and 8 years, and applicable to the offenses of felonious assault under R.C. 2903.11(A)(1), felonious assault under R.C. 2903.11(A)(2), and discharge of a firearm upon or over a public road or highway under R.C. 2923.162(A)(3), all felonies of the second degree. We find no error associated with the sentence imposed by the trial court. *State v. Jones*, 8th Dist. Cuyahoga No. 108050, 2019-Ohio-5237; *State v. Tidmore*, 8th Dist. Cuyahoga No. 107369, 2019-Ohio-1529; *State v. Horner*, 8th Dist. Cuyahoga No. 103719, 2016-Ohio-7608; *State v. East*, 8th Dist. Cuyahoga No. 102442, 2015-Ohio-4375.

**{¶ 8}** It must be also noted that the imposition of two consecutive three-year firearm specifications (R.C. 2941.145(A)) was mandatory as required by R.C. 2929.14(B)(1)(g), and did not constitute any error on the part of the trial court. *State v. Smith*, 1st Dist. Hamilton No. C-190507, 2020-Ohio-4976, *State v. Howard*, 2d Dist. Montgomery No. 28314, 2020-Ohio-3819; *State v. Rouse*, 9th Dist. Summit No. 28301, 2018-Ohio-3266.

## III. Conclusion

**{¶ 9}** Bradley was properly sentenced by the trial court, and we find no prejudice under his sole proposed assignment of error.

**{¶ 10}** Application denied.

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PATRICIA ANN BLACKMON, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and
RAYMOND C. HEADEN, J., CONCUR