

THE STATE OF OHIO, APPELLEE, v. WEBB, APPELLANT.

[Cite as *State v. Webb*, 1995-Ohio-53.]

Appellate procedure—Application for reopening appeal from judgment and conviction based on claim of ineffective assistance of appellate counsel—Application denied when claim is res judicata because applicant had expressed discontent with his appellate counsel on direct appeal and errors alleged do not raise any genuine issues of ineffective assistance of appellate counsel.

(No. 94-2471—Submitted February 21, 1995—Decided May 24, 1995.)

APPEAL from the Court of Appeals for Cuyahoga County, No. 59544.

{¶ 1} According to the court of appeals' opinion, appellant, Frank J. Webb, was convicted of, *inter alia*, aggravated robbery with a firearm specification, kidnapping, attempted murder, possession of dangerous ordnance, having a weapon under disability, and felonious assault. The court of appeals reversed the convictions for felonious assault and the firearm specification and affirmed the other convictions. *State v. Webb* (Jan. 2, 1992), Cuyahoga App. Nos. 59544, 59626 and 59627, unreported, 1992 WL 1028. Subsequently, appellant filed an application to reopen his appeal in the court of appeals, alleging ineffective assistance of appellate counsel for failure to argue that appellant was denied constitutional rights when the trial court failed to instruct the jury on appellant's right to a unanimous verdict and because the indictment failed to specify a material element of the crime of attempted murder.

{¶ 2} The court of appeals denied the application to reopen, holding that the claims were *res judicata* because appellant had expressed discontent with his appellate counsel on direct appeal and filed *pro se* assignments of error. Therefore,

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appellant could then have filed the assignments of error he now seeks to litigate in his application to reopen. Moreover, the court of appeals held that the errors alleged do not raise any genuine issues of ineffective assistance of appellate counsel.

Stephanie Tubbs Jones, Cuyahoga County Prosecuting Attorney, and
George J. Sadd, Assistant Prosecuting Attorney, for appellee.

Frank J. Webb, pro se.

Per Curiam.

{¶ 3} The judgment of the court of appeals is affirmed for the reasons stated in its opinion.

Judgment affirmed.

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