

STATE OF OHIO, MAHONING COUNTY  
IN THE COURT OF APPEALS  
SEVENTH DISTRICT

STATE OF OHIO	)	
	)	
PLAINTIFF-APPELLEE	)	
	)	CASE NO. 13 MA 22
VS.	)	
	)	OPINION
RONALD PYLES, JR.	)	AND
	)	JUDGMENT ENTRY
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS: Application for Reopening

JUDGMENT: Denied

APPEARANCES:  
For Plaintiff-Appellee

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

For Defendant-Appellant

Ronald Pyles, Jr., Pro-se  
#A634885  
S.C.C. @ Hocking Correctional Facility  
16759 Snake Hollow Road  
P.O. Box 59  
Nelsonville, Ohio 45764

JUDGES:

Hon. Mary DeGenaro  
Hon. Gene Donofrio  
Hon. Carol Ann Robb

PER CURIAM.

Dated: May 4, 2016

{¶1} Appellant Ronald Pyles, Jr. has filed a timely App.R. 26(B) application to reopen his appeal based on a claim of ineffective assistance of appellate counsel. Because Pyles has failed to demonstrate a genuine issue as to whether he was deprived of the effective assistance of counsel on appeal, his application is denied.

{¶2} Following a jury trial, Pyles was convicted of one count of gross sexual imposition under R.C. 2907.05(A)(1), and one count of rape under R.C. 2907.02(A)(1)(c), for sexually abusing a developmentally disabled young woman who came to live at a shelter attached to the church where Pyles was pastor. He was sentenced to an aggregate prison term of 13 years.

{¶3} On appeal, Pyles' appellate counsel raised the following assignments of error: (1) Pyles' speedy trial rights were violated; (2) his convictions were not supported by sufficient evidence or were against the manifest weight of the evidence; (3 and 4) the trial court's evidentiary decisions denied him a fair trial, either individually or under the cumulative error doctrine; and (5) he was denied his constitutional guarantee of effective assistance of counsel. We concluded that these assignments of error were meritless and affirmed the judgment of the trial court in *State v. Pyles*, 7th Dist. No. 13 MA 22, 2015-Ohio-5594.

{¶4} On February 29, 2016, Pyles filed a timely application to reopen his appeal pursuant to App.R. 26(B). He attached an affidavit to his application where he states his belief that his appellate counsel failed to provide him with effective assistance. In addition, he attached an affidavit concerning lack of a record in which he avers that his search of the docket reveals no trial date was listed from August 2012 until the date of the bench trial on January 7, 2013. He also filed an affidavit of indigence and affidavit of verity. The State has not filed a response.

{¶5} Pursuant to App.R. 26(B)(1), a criminal defendant "may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel." Pursuant to App.R. 26(B)(2), an application for reopening shall contain, inter alia:

(c) One 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;

(d) A sworn statement of the basis for the claim that appellate counsel's representation was deficient with respect to the assignments of error or arguments raised pursuant to division (B)(2)(c) of this rule and the manner in which the deficiency prejudicially affected the outcome of the appeal, which may include citations to applicable authorities and references to the record;

(e) Any parts of the record available to the applicant and all supplemental affidavits upon which the applicant relies.

App.R. 26(B)(2)(c)-(e).

{¶6} An applicant must demonstrate that "there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal." App.R. 26(B)(5). If the application is granted, the appellate court must appoint counsel to represent the applicant if the applicant is indigent and unrepresented. App.R. 26(B)(6)(a).

{¶7} In order to show ineffective assistance of appellate counsel, the applicant must meet the two-prong test outlined in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Pursuant to *Strickland*, the applicant must demonstrate deficient performance of counsel and resulting prejudice. *Id.* at 687. See also App.R. 26(B)(9).

{¶8} Here, Pyles proposes three assignments of error in support of his argument that appellate counsel was ineffective, the first of which asserts:

Defendant's due process rights were violated by the vindictive actions of the court that filed felony charges against the Defendant based upon the same action Defendant was appealing.

{¶9} Although it is somewhat unclear, it appears Pyles raises three separate

issues here: vindictive prosecution, judicial bias, and that the trial court abused its discretion regarding an evidentiary matter. With regard to the first issue, vindictive prosecution, as this court has recently noted: "where the State brings additional or more serious charges that subject a defendant to an increased punishment following the successful appeal of his conviction, a rebuttable presumption of vindictive prosecution attaches." *State v. Weston*, 7th Dist. No. 12 MA 122, 2014-Ohio-4252, ¶ 49, citing *Thigpen v. Roberts*, 468 U.S. 27, 104 S.Ct. 2916, 82 L.Ed.2d 23 (1984); *Blackledge v. Perry*, 417 U.S. 21, 94 S.Ct. 2098, 40 L.Ed.2d 628 (1974).

{¶10} Pyles' vindictive prosecution claim centers on the fact that felony charges in this case were presented while he was appealing the trial court's decision in a separate civil protection order case involving the same victim and circumstances. That appeal was ultimately successful. *Morton v. Pyles*, 7th Dist. No. 11 MA 124, 2012-Ohio-5343.

{¶11} However, Pyles' vindictive prosecution argument fails for several reasons. First, he failed to raise this issue in the trial court. Second, the timing does not support the claim: felony charges were brought on May 31, 2012 and the appellate decision from the civil protection order case was not released until November 14, 2012. See *id.* Third, and most importantly, the other appeal did not involve a *conviction*, but rather was an appeal from a *civil* matter.

{¶12} Insofar as Pyles also asserts that the trial court was somehow biased against him, this argument fails because "R.C. 2701.03 provides the proper procedure for seeking disqualification of a common pleas court judge. See, also, Section 5(C) of Article IV of the Ohio Constitution. An appellate court is without authority to pass upon issues of disqualification or to void a judgment on the basis that a judge should be disqualified for bias or prejudice. \* \* \* " *State v. Donald*, 7th Dist. No. 09 MA 172, 2011-Ohio-3400, ¶ 13, quoting *State v. Drummond*, 7th Dist. No. 05 MA 197, 2006-Ohio-7078, ¶ 105.

{¶13} Pyles also argues that the trial court erred in failing to admit the transcript of the CPO proceedings and/or the appellate decision reversing the CPO, in the criminal trial herein. However, he failed to include the relevant portions of the record in support of this argument. "App.R. 26(B)(2)(e) places the responsibility squarely upon

the applicant to provide the court of appeals with such portions of the record as are available to him” and where, absent a showing of unavailability, he fails to provide them, the application, or the relevant portion thereof, is properly denied. *State v. Rose*, 7th Dist. No. 12 JE 18, 2014-Ohio-5049, ¶ 3, quoting *State v. McNeill*, 83 Ohio St.3d 457, 459, 700 N.E.2d 613 (1998). Pyles asserts that he "has actively endeavored to obtain transcripts but without success," but fails to explain specifically what actions he took. And in any event, our opinion on the direct appeal shows that appellate counsel raised as error the trial court's decision not to admit the transcript of the prior CPO hearing as evidence. See *Pyles* at ¶ 99-102.

{¶14} In his second of three proposed assignments of error, Pyles asserts:

Defendant's due process rights were violated when the trial court used a bench trial as a guise [sic] for a vindictive process of imposing a plea bargain upon the Defendant.

{¶15} In this assignment, Pyles seems to reiterate his claims of judicial bias on the part of the trial court; however, he additionally argues that there was some sort of collusion between his defense counsel at the trial court level (whom he retained) and the trial court. He contends that the "sham bench trial was a thinly veiled plea agreement between defense counsel and Judge Evans without giving the defendant an opportunity to refuse the plea." He goes on to argue that the trial court's failure to enter a new trial date on the record after the parties' joint continuance in August 2012 "is prima facie evidence the Court intended to accept only a plea bargain by fair means, or as in this case, by foul."

{¶16} This argument is illogical. Moreover, Pyles' contentions are wholly meritless because Pyles "entered into a written waiver of his right to a jury trial[,] \* \* \* [t]he trial court questioned Pyles regarding waiver of his rights as required by R.C. 2945.05," and the matter actually proceeded to trial. See *Pyles* at ¶ 10.

{¶17} Finally, in his third proposed assignment of error, Pyles asserts:

Lack of a trial date entered in the journal is prima facie evidence of intent to violate constitutional right to a speedy trial.

{¶18} Here Pyles raises issues related to speedy trial, which was assigned as an error on appeal and was fully considered by this court, including the issue that no trial date was set on the record following the parties' joint motion for continuance on August 6, 2012. We concluded that the speedy time tolled during that period. See *Pyles* at ¶ 57 -58. Accordingly, this cannot form a basis for reopening the appeal.

{¶19} In sum, Pyles received effective assistance of counsel in his direct appeal and there was no reasonable probability of success had counsel raised the assignments of error Pyles now proposes. Accordingly Pyles' application for reopening is denied.

DeGenaro, J., concurs

Donofrio, P.J., concurs

Robb, J., concurs