[Cite as *State v. Ford*, 2008-Ohio-1938.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 88946 and 88947

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

NATHAN FORD

DEFENDANT-APPELLANT

JUDGMENT: APPLICATION DENIED

APPLICATION FOR REOPENING
MOTION NO. 405163
LOWER COURT NO. CR-464709
COMMON PLEAS COURT

RELEASE DATE: April 21, 2008

[Cite as *State v. Ford*, 2008-Ohio-1938.]

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PATRICIA A. BLACKMON, J.:

{¶ 1} Nathan Ford has filed a timely application for reopening pursuant to App.R. 26(B). Ford is attempting to reopen the appellate judgment that was rendered in *State v. Ford*, Cuyahoga App. Nos. 88946 & 88947, 2007-Ohio-5722, which affirmed his convictions following no contest pleas to fifty-three charged offenses.[1] For the following reasons, we decline to reopen Ford's appeal.

{¶ 2} Initially, we find that the doctrine of res judicata prevents the reopening of Ford's appeal. The principles of res judicata may be applied to bar the further litigation of issues that were previously raised or could have been raised in an appeal. [2] Claims of ineffective assistance of appellate counsel may be barred from further review, by the doctrine of res judicata, unless circumstances render the application of the doctrine unjust.[3]

{¶ 3} In the case sub judice, Ford possessed a prior opportunity to challenge the effectiveness of his appellate counsel through an appeal to the Supreme Court of Ohio. In fact, Ford did file an appeal, pro se, with the Supreme Court of Ohio on

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[1]In *State v. Ford*, Cuyahoga County Court of Common Pleas Case No. CR-464709, Ford entered pleas of no-contest and was found guilty, by the trial court, of twenty-six counts of rape, seven counts of kidnapping, thirteen counts of gross sexual imposition, one count of felonious assault, and two counts of aggravated robbery. In *State v. Ford*, Cuyahoga County Court of Common Pleas Case No. CR-469583, Ford entered pleas of no-contest and was found guilty, by the trial court, of the offenses of rape and kidnapping.

[2]See, generally, *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104.

[3]*State v. Murnahan* (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204.

December 10, 2007. Since the Supreme Court of Ohio dismissed Ford's appeal on March 26, 2008, res judicata now bars any further review of the claim of ineffective assistance of appellate counsel. We further find that the circumstances of this case do not render the application fo the doctrine of res judicata unjust.[4]

{¶ 4} Finally, a substantive review of Ford's brief, in support of the application for reopening, fails to support the claim of ineffective assistance of appellate counsel. It is well settled that appellate counsel is not required to raise and argue meritless and/or frivolous assignments of error.[5] Appellate counsel cannot be considered ineffective for failing to raise every conceivable assignment of error on appeal.[6] It must also be noted that consideration of Ford's proposed assignment, which involves the claim that his appellate counsel "was ineffective * * * by Counsel's failure to turn over the transcripts of the Appellant's Trials and other proceedings * * * so that Appellant could perfect a timely and properly submitted Proposition of Law to the Supreme Court of Ohio * * *," would not have resulted in a

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[4] *State v. Dehler*, 73 Ohio St.3d 307, 1995-Ohio-32, 652 N.E.2d 987; *State v. Terrell*, 72 Ohio St.3d 247, 1995-Ohio-54, 648 N.E.2d 1353; *State v. Smith* (Jan. 29, 1996), Cuyahoga App. No. 68643, unreported, reopening disallowed (June 14, 1996), Motion No. 71793.

[5] *Jones v. Barnes* (1983), 463 U.S. 745, 77 L.Ed.2d 987, 103 S.Ct. 3308.

[6] Id.; *State v. Grimm* (1995), 73 Ohio St.3d 413, 653 N.E.2d 253; *State v. Campbell* (1994), 69 Ohio St.3d 38, 630 N.E.2d 339.

reversal of the trial court's finding of guilt with regard to the offenses of rape, kidnapping, gross sexual imposition, felonious assault, and aggravated robbery.[7]

{¶ 5} Accordingly, the application for reopening is denied.

PATRICIA A. BLACKMON,
PRESIDING JUDGE

ANN DYKE, J., AND
MARY J. BOYLE, J., CONCUR

[7]*Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct 2052, 80 L.Ed.2d 674; *State v. Smith* (1985), 17 Ohio St.3d 98, 477 N.E.2d 1128; *Vaughn v. Maxwell* (1965), 2 Ohio St.2d 299, 209 N.E.2d 164.