[Cite as *State v. Hall*, 2010-Ohio-431.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 90365

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LISA M. HALL

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Application for Reopening
Motion No. 422232
Cuyahoga County Common Pleas Court
Case No. CR-475449

RELEASE DATE: February 8, 2010

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

By: Matthew E. Meyer
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLANT

Timothy Young
Ohio Public Defender

By: Kenneth R. Spiert
Spencer Cahoon
Assistant State Public Defenders
250 East Broad Street
Suite 1400
Columbus, Ohio 43215

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} In *State v. Hall*, Cuyahoga County Court of Common Pleas Case No. CR-475449, applicant, Lisa M. Hall ("Hall"), was a co-defendant with her mother, Joan Hall ("Joan"), and her mother's boyfriend, Roger Neff. "The evidence showed that Joan was involved in a massive retail fraud scam that spanned twenty-nine states and a period of at least fifteen years. The scheme involved Joan, and sometimes Neff, going to various retailers to illegally return clothes, jewelry, and other household items." *State v. Hall*, Cuyahoga App. No. 90365,

2009-Ohio-461, at ¶5. "Hall was charged with four counts of tampering with records and one count each of engaging in a pattern of corrupt activity, theft of property over $1 million, receiving stolen property, and money laundering." Id. at ¶2. She was convicted of engaging in a pattern of corrupt activity under Ohio's RICO statute, receiving stolen property and money laundering. This court affirmed that judgment. 2009-Ohio-461, supra. The Supreme Court of Ohio denied Hall's motion for leave to appeal and dismissed the appeal as not involving any substantial constitutional question. *State v. Hall*, 122 Ohio St.3d 1412, 2009-Ohio-2751, 907 N.E.2d 1195.

{¶ 2} Hall has filed with the clerk of this court a timely application for reopening. She asserts that she was denied the effective assistance of appellate counsel because her appellate counsel did not assign as error that: 1) her "trial counsel failed to conduct a reasonable investigation and, as a result, failed to present at trial documents that establish innocent sources of the cash in Joan Hall's safe deposit boxes which was the basis of Lisa's receiving stolen property conviction," Application, at 2; and 2) "[t]he trial court erred by convicting Lisa Hall for receiving stolen property on the basis that she was made a deputy on two of her mother's safe deposit boxes * * *," Application, at 7. We deny the application for reopening. As required by App.R. 26(B)(6), the reasons for our denial follow.

{¶ 3} Having reviewed the arguments set forth in the application for reopening in light of the record, we hold that Hall has failed to meet her burden to 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). In *State v. Spivey*, 84 Ohio St.3d 24, 1998-Ohio-704, 701 N.E.2d 696, the Supreme Court specified the proof required of an applicant. "In *State v. Reed* (1996), 74 Ohio St.3d 534, 535, 660 N.E.2d 456, 458, we held that the two prong analysis found in *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674, is the appropriate standard to assess a defense request for reopening under App.R. 26(B)(5). [Applicant] must prove that his counsel were deficient for failing to raise the issues he now presents, as well as showing that had he presented those claims on appeal, there was a 'reasonable probability' that he would have been successful. Thus, [applicant] bears the burden of establishing that there was a 'genuine issue' as to whether he has a 'colorable claim' of ineffective assistance of counsel on appeal." Id. at 25. Applicant cannot satisfy the *Strickland* test. We must, therefore, deny the application on the merits.

{¶ 4} In her first proposed assignment of error, Hall contends that her appellate counsel was ineffective for failing to argue on direct appeal that trial counsel was ineffective for failing to investigate and use at trial purportedly

exculpatory evidence. Hall argues that the evidence would have shown that the cash in two of her mother's safety deposit boxes came from "innocent sources."

{¶ 5} After trial, Hall's trial counsel obtained from the police various items including documents which Hall claims support her argument that Joan received significant funds from a boyfriend, Sanford Frumker (the "Frumker documents"). Hall contends that these documents represent innocent sources for the contents of the safety deposit boxes. She argues that, if her counsel conducted an appropriate investigation prior to trial, they would have obtained these materials and used them during trial. The failure to obtain these documents before trial, Hall insists, constitutes deficient performance by trial counsel.

{¶ 6} Hall included the Frumker documents in her motion for new trial. On direct appeal, Hall argued that the state withheld the Frumker documents from her and argued that the state's conduct constituted prosecutorial misconduct requiring reversal. This court affirmed the trial court's determination that the state did not withhold exculpatory information.

{¶ 7} "Moreover, assuming arguendo that the State had "withheld" the Frumker documents, we find no due process violation. Based on the voluminous record before us, we find no reasonable probability that the outcome of the trial would have been different had the defense received or found the Frumker documents. See *State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128, 767 N.E.2d 166. The allegations at trial were that Hall took her mother's money and

laundered it in various ways. Even if some of her mother's money was legitimate, having been given to her by Frumker, that does not negate the evidence that Hall had knowledge that at least some of her mother's money that she invested for her was from illegitimate sources." 2009-Ohio-461, at ¶39.

{¶ 8} On direct appeal, this court also responded to Hall's argument "that her convictions for receiving stolen property and money laundering were not supported by sufficient evidence.

{¶ 9} "* * *

{¶ 10} "We find that the State presented sufficient evidence to support her convictions. The evidence showed that she was a key holder to two of her mother's safety deposit boxes, and those boxes contained numerous items that were part of her mother's scheme. Hall argues that being a key holder does not mean that she knew the property was stolen. That statement is rebutted by evidence that Hall went to the bank with her mother to open the safety deposit boxes in 2004 and spent over thirty minutes placing items in the boxes, and then, after her mother was arrested, lied to bank employees about what happened to the keys, tried to get her mother's name removed from the box, and finally inquired about having the bank drill out the box so she could obtain the contents.

{¶ 11} "The State also presented sufficient evidence that Hall laundered the proceeds of her mother's stolen money. Both Bradley [Hall's brother] and Mobley [who was convicted in Florida of operating a fraudulent hedge fund and

received large sums of money from Hall, Joan, and Frumker] testified that Hall had knowledge that her mother's money was illegitimate. And the evidence presented at trial shows Hall's direct involvement in managing her mother's money, directing the money into various investments, and that her mother gave her hundreds of thousands of dollars to invest or use when Hall had knowledge that her mother was on public assistance." 2009-Ohio-461, at ¶82, 88-89.

{¶ 12} Clearly, this court has already determined that, in light of the scope of the evidence against her, the absence of Hall's introducing the Frumker documents as part of the case-in-chief did not adversely affect the outcome of her trial. That is, this court has already concluded that she was not prejudiced because there is "no reasonable probability that the outcome of the trial would have been different had the defense received or found the Frumker documents." Id. at ¶39, supra.

{¶ 13} "Since the same issues were raised and addressed by this court on direct appeal, we find that the doctrine of res judicata prohibits this court from reopening the original appeal. Errors of law that were either raised or could have been raised through a direct appeal may be barred from further review vis-a-vis the doctrine of res judicata. See, generally, *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 1204. The Supreme Court of Ohio has further established that a claim for ineffective assistance of counsel may be barred by the doctrine of res judicata unless circumstances render the application of the doctrine unjust.

State v. Murnahan (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204." *State v. Moats*, Cuyahoga App. No. 91646, 2009-Ohio-3063, reopening disallowed, 2009-Ohio-5350, at ¶6.

{¶ 14} In her application for reopening, Hall again asserts that her defense was prejudiced by the absence of the Frumker documents. As this court determined on direct appeal, however, we again conclude that there was no prejudice to Hall. The evidence against her was "voluminous, and admission of the Frumker documents would not have required a different judgment by the trial court. As a consequence, the application of res judicata is not unjust. Hall's first proposed assignment of error does not, therefore, provide a basis for reopening.

{¶ 15} In her second proposed assignment of error, Hall contends that her appellate counsel was ineffective for failing to argue on direct appeal that the trial court erred in convicting her of receiving stolen property because Hall was a deputy on two of Joan's safety deposit boxes. Initially, we note that the trial court made the following comments when it announced its verdict:

{¶ 16} "As to Count 9, receiving stolen property over $100,000, the defendant, Lisa Hall, is found guilty based upon the money found in the safety deposit boxes and the letters that indicate her mother's end-of-year balance sheets, et cetera. There was knowledge there that that money was the fruit of illegal activity. She expressed the knowledge of the source; and, she also was

the deputy. She exerted as much control over those monies in the safety deposit boxes in the banks in the Cleveland area." Tr. at 5432.

{¶ 17} Hall characterizes the trial court's verdict on the receiving stolen property count as if it were solely or primarily based on her being a deputy on two boxes. As the trial court's statements demonstrate, Hall's being a deputy was only one aspect of the evidence that the trial court considered in reaching its verdict.

{¶ 18} Hall has not provided this court with any controlling authority which would provide a basis for concluding that there was a reasonable probability that Hall would have been successful on direct appeal if her appellate counsel had asserted her second proposed assignment of error. Rather, the discussion above and the excerpts from this court's opinion on direct appeal demonstrate that Hall's appellate counsel was not deficient by omitting this assignment of error, and she was not prejudiced by the absence of her second proposed assignment of error. In addition to the fact that she was a deputy on two safety deposit boxes, there is extensive evidence of Hall's knowledge of and involvement with the safety deposit boxes. See 2009-Ohio-461, at ¶88, quoted above.

{¶ 19} Once again, this court has already considered Hall's fundamental issue that the state did not present sufficient evidence for her conviction of receiving stolen property. In light of this court's determination on direct appeal

that there was sufficient evidence as well as the other evidence against Hall, we again conclude that the application of res judicata is not unjust. Hall's second proposed assignment of error does not, therefore, provide a basis for reopening.

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

FRANK D. CELEBREZZE, JR., JUDGE

MARY EILEEN KILBANE, P.J., and
MARY J. BOYLE, J., CONCUR