

[Cite as *State v. Segines*, 2011-Ohio-1579.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 89915**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**RICHARD SEGINES**

DEFENDANT-APPELLANT

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**JUDGMENT:  
APPLICATION DENIED**

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Cuyahoga County Court of Common Pleas  
Case No. CR-487410  
Application for Reopening  
Motion No. 441247

**RELEASE DATE:** March 25, 2011

## **FOR APPELLANT**

Richard Segines  
Inmate No. 530-155  
Mansfield Correctional Institution  
P.O. Box 788  
Mansfield, Ohio 44901

## **ATTORNEYS FOR APPELLEE**

William D. Mason  
Cuyahoga County Prosecutor

By: Thorin Freeman  
Assistant County Prosecutor  
9th Floor Justice Center  
1200 Ontario Street  
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MARY EILEEN KILBANE, A.J.:

{¶ 1} Richard Segines has filed a timely application for reopening pursuant to App.R. 26(B). Segines is attempting to reopen the appellate judgment that was rendered in *State v. Segines*, Cuyahoga App. No. 89915, 2010-Ohio-5112, which once again affirmed his convictions for murder and aggravated robbery.<sup>1</sup> For the following reasons, we decline to

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<sup>1</sup> ‘Segines’ conviction for murder and aggravated robbery was originally affirmed by this court in *State v. Segines*, Cuyahoga App. No. 89915, 2008-Ohio-2041. Segines filed a timely application for reopening, pursuant to App.R. 26(B), which was granted by this court on June 8, 2009. See *State v. Segines*, Cuyahoga App. No. 89915, 2008-Ohio-2041, reopening allowed 2009-Ohio-2698, Motion No. 411845. On January 24, 2011, Segines filed a second timely application for reopening from the appellate judgment, as journalized on October, 21, 2010, which once again affirmed his conviction for the offenses of murder and aggravated robbery.

reopen the appellate judgment that was journalized on October 21, 2010.

{¶ 2} In order to establish a claim of ineffective assistance of appellate counsel, Segines must demonstrate that appellate counsel's performance was deficient and that, but for his deficient performance, the result of his appeal would have been different. *State v. Reed*, 74 Ohio St.3d 534, 1996-Ohio-21, 660 N.E.2d 456. Specifically, Segines must establish that "there is a genuine issue as to whether he was deprived of the assistance of counsel on appeal." App.R. 26(B)(5).

{¶ 3} "In *State v. Reed* [supra, at 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 was deficient for failing to raise the issue 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." *State v. Spivey*, 84 Ohio St.3d 24, 25, 1998-Ohio-704, 701 N.E.2d 696.

{¶ 4} It is also well settled that appellate counsel is not required to raise and argue assignments of error that are meritless. *Jones v. Barnes* (1983), 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987. Appellate counsel cannot be considered ineffective for failing to raise every conceivable assignment of error on appeal. *Barnes*; *State v. Gumm*, 73 Ohio St.3d 413,

1995-Ohio-24, 653 N.E.2d 253; *State v. Campbell*, 69 Ohio St.3d 38, 1994-Ohio-492, 630 N.E.2d 339.

{¶ 5} In *Strickland*, the United States Supreme Court also stated that a court's scrutiny of an attorney's work must be deferential. The court further stated that it is too tempting for a defendant/appellant to second-guess his attorney after conviction and appeal and that it would be all too easy for a court to conclude that a specific act or omission was deficient, especially when examining the matter in hindsight. Accordingly, "a court must indulge 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." *Id.* at 689. Finally, the United States Supreme Court has upheld the appellate attorney's discretion to decide which issues he or she believes are the most fruitful arguments and the importance of winnowing out weaker arguments on appeal and focusing on one central issue or at most a few key issues. *Barnes*.

{¶ 6} In support of his claim of ineffective assistance of appellate counsel, Segines raises a single proposed assignment of error:

**"Defendant-appellant's right to a Fair Trial and right to Due Process of law guaranteed by the Fourteenth Amendment and Article 1 Section 10 of the Ohio Constitution was violated due to joinder of Defendants at trial."**

{¶ 7} Segines, through his proposed assignment of error, argues that he was prejudiced as a result of the his joinder for trial with another defendant. This assignment of

error, however, is barred from further review, since it was previously raised in the original appeal and found to be without merit. The doctrine of res judicata prevents further review. See, generally, *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph one of the syllabus. The Supreme Court of Ohio has also established that a claim of ineffective assistance of appellate counsel may be barred from further review, in an App.R. 26(B) application for reopening, by the doctrine of res judicata. *State v. Murnahan* (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204.

{¶ 8} In the case sub judice, the issue of an improper joinder was raised through Segines's fourth assignment of error in his 2008 appeal. This court held that:

{¶ 9} “In this matter, the record indicates that defendant filed the motion for a separate trial after the jury had already been impaneled and the state had begun the presentation of its evidence. The motion was not timely pursuant to Crim.R. 12(D). *State v. Palmer*, Jefferson App. No. 04-JE-41, 2006-Ohio-749. In addition, since the state maintained that all three original defendants acted in concert, and aided and abetted one another, the evidence of [co-defendant's] conduct would be admissible even if the counts were severed, and the evidence of each crime was simple and distinct. We find no abuse of discretion.” *State v. Segines*, Cuyahoga app. No. 89915, 2008-Ohio-2041, at ¶57.

{¶ 10} Thus, we are prevented from considering the proposed assignment of error and find that Segines has failed to establish the claim of ineffective assistance of appellate counsel.

{¶ 11} Accordingly, Segines' application for reopening is denied.

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MARY EILEEN KILBANE, ADMINISTRATIVE JUDGE

COLLEEN CONWAY COONEY, J., and  
SEAN C. GALLAGHER, J., CONCUR