

[Cite as *State v. Harrison*, 2011-Ohio-699.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93132**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**LORENZO HARRISON**

DEFENDANT-APPELLANT

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**JUDGMENT:  
APPLICATION DENIED**

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Cuyahoga County Common Pleas Court  
Case No. CR-513945  
Application for Reopening  
Motion No. 437568

**RELEASE DATE:** February 14, 2011

**FOR APPELLANT**

Lorenzo W. Harrison, pro se  
Inmate No. 563-687  
Lebanon Correctional Institution  
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**ATTORNEYS FOR APPELLEE**

William D. Mason  
Cuyahoga County Prosecutor

By: Mary McGrath  
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KATHLEEN A. KEOUGH, J.:

{¶ 1} In *State v. Harrison*, Cuyahoga County Court of Common Pleas Case No. CR-513945, applicant was convicted of three counts of rape and three counts of kidnapping. The victim was under ten years of age. This court reversed that judgment in part and

remanded the case in *State v. Harrison*, Cuyahoga App. No. 93132, 2010-Ohio-2778.<sup>1</sup> The Supreme Court of Ohio denied applicant's motion for leave to appeal and dismissed the appeal as not involving any substantial constitutional question. *State v. Harrison*, 126 Ohio St.3d 1602, 2010-Ohio-4928, 935 N.E.2d 47.

{¶ 2} Harrison has filed with the clerk of this court an application for reopening. He asserts that he was denied the effective assistance of appellate counsel because his appellate counsel did not assign various errors on direct appeal. We deny the application for reopening. As required by App.R. 26(B)(6), the reasons for our denial follow.

{¶ 3} Harrison's application is procedurally defective. App.R. 26(B)(2) provides, in part: "An application for reopening shall contain all of the following:

{¶ 4}    "\* \* \*

{¶ 5}    "(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[.]"

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<sup>1</sup> This court remanded the case to the trial court to consider Harrison's claims that he had been "railroaded" by counsel and the court. See 2010-Ohio-2778, ¶134 et seq. On remand, the trial court denied Harrison's motion to replace counsel and Harrison's appeal from that order is pending. See Case No. 95666.

{¶ 6} At the end of his application, Harrison signed a statement in which he “certif[ies] under penalty of perjury that the statements made herein are true and correct to the best of my knowledge and belief and that appellate counsel was ineffective on direct appeal.” He preceded this statement with the following: “UNABLE TO GET NOTARY SERVICE.” (Capitalization and emphasis in original.)

{¶ 7} We previously held that a statement which is not notarized is not sufficient to meet the requirements of App.R. 26(B)(2)(d). See *State v. Waller*, Cuyahoga App. No. 87279, 2006-Ohio-4891, reopening disallowed, 2007-Ohio-6188. Additionally, in *Waller*, we observed that the failure to support an application for reopening with a sworn statement is a sufficient ground for denying the application. *Id.*, ¶19. See also *State v. Lechner*, 72 Ohio St.3d 374, 1995-Ohio-25, 650 N.E.2d 449 (affirming the finding of the court of appeals that the sworn statement required by App.R. 26(B)(2)(d) is mandatory).

{¶ 8} We also deny the application on the merits. Having reviewed the arguments set forth in the application for reopening in light of the record, we hold that Harrison has failed to meet his 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.

{¶ 9} Harrison argues that the sentence of life without parole on the rape counts was not authorized by R.C. 2907.02 at the time of the counts on which he was convicted (from August 1, 2005 through August 1, 2006). During that time, R.C. 2907.02(B) authorized a court to impose a sentence of life without parole under certain circumstances when the victim was under ten years of age. See: H.B. 485, effective June 13, 2002; Am. Sub. S.B. No. 260, effective January 2, 2006. Harrison has not demonstrated that his appellate counsel was deficient or that he was prejudiced by the absence of this assignment of error. As a consequence, Harrison's first proposed assignment of error does not provide a basis for reopening.

{¶ 10} He also complains that his right to a speedy trial was violated. The record reflects that: no fewer than eight continuances were at the defendant's request; the trial court referred Harrison to the psychiatric clinic; and a motion for discovery was filed on Harrison's

behalf. As a consequence, Harrison’s second proposed assignment of error does not provide a basis for reopening. See *State v. Friedlander*, Cuyahoga App. No. 90084, 2008-Ohio-2812, reopening disallowed, 2009-Ohio-3370, ¶19.

{¶ 11} Harrison also contends that sexual battery was the appropriate charge rather than rape. At the time of the charges on which Harrison was convicted, the victim and her mother were living with Harrison. R.C. 2907.03 defines sexual battery. Among the acts prohibited by R.C. 2907.03 is sexual conduct when “[t]he offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.” R.C. 2907.03(A)(5), H.B. 510, effective March 31, 2003. Harrison contends that rape is an inappropriate charge because he was in a quasi-parental relationship with the victim. He does not, however, provide the court with any authority for this contention. He has not, therefore, met his burden of demonstrating that there was a 'genuine issue' as to whether he has a 'colorable claim' of ineffective assistance of counsel on appeal. We cannot conclude that his counsel was deficient or that Harrison was prejudiced by the absence of this assignment of error. As a consequence, Harrison’s third proposed assignment of error does not provide a basis for reopening.

{¶ 12} Harrison cannot satisfy either prong of the *Strickland* test. Accordingly, the application for reopening is denied.

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KATHLEEN A. KEOUGH, JUDGE

SEAN C. GALLAGHER, P.J., and  
KENNETH A. ROCCO, J., CONCUR