

[Cite as *State v. Kappenhagen*, 2014-Ohio-4923.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 100798

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MICHAEL J. KAPPENHAGEN

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-12-567907-A
Application for Reopening
Motion No. 479574

RELEASE DATE: November 5, 2014

FOR APPELLANT

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ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor

By: Frank Romeo Zeleznikar
Assistant County Prosecutor
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TIM McCORMACK, J.:

{¶1} On October 22, 2014, the applicant, Michael Kappenhagen, pursuant to App.R. 26(B) and *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992), applied to reopen this court’s judgment in *State v. Kappenhagen*, 8th Dist. Cuyahoga No. 100798, 2014-Ohio-3916, in which this court affirmed his convictions and sentences for kidnapping with repeat violent offender and firearm specifications, tampering with evidence, and having weapons while under disability. Kappenhagen received a 19-year sentence, including eight years for the repeat violent offender specification.¹ Kappenhagen now argues that his appellate counsel was ineffective because he did not argue the validity of the repeat violent offender specification. On November 3, 2014, the state of Ohio filed its brief in opposition. For the following reasons, this court denies the application.

{¶2} Kappenhagen’s indictment for the kidnapping charge included a repeat violent offender specification that he had pleaded guilty to aggravated robbery, a first-degree felony, in 2003 in *State v. Kappenhagen*, Cuyahoga C.P. No. CR-03-438484-ZA. Before trial, the defense stipulated to a certified notice of that prior conviction of aggravated robbery with a one-year firearm specification. A review of the docket in Case No. CR-03-438484-ZA confirms that Kappenhagen pleaded guilty to that charge. In the present case, the trial judge in his November 15, 2013 journal entry found Kappenhagen guilty of the repeat violent offender specification. Given these facts, appellate counsel properly rejected arguing the validity of the repeat violent offender specification as futile. *Jones v. Barnes*, 463 U.S. 745, 751-752, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983), and *State v. Allen*, 77 Ohio St.3d 172, 672 N.E.2d 638 (1996).

¹ Kappenhagen, brandishing a rifle and a handgun, restrained his “girlfriend” in her home over unrequited love.

{¶3} Accordingly, this court denies the application to reopen.

TIM McCORMACK, JUDGE

PATRICIA ANN BLACKMON, P.J., and
MELODY J. STEWART, J., CONCUR.