

[Cite as *State v. Orr*, 2014-Ohio-5274.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 100841

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DARLLEL B. ORR

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case No. CR-12-560637-A
Application for Reopening
Motion No. 479951

RELEASE DATE: November 21, 2014

FOR APPELLANT

Darrell B. Orr, pro se
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ATTORNEYS FOR APPELLEE

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MARY J. BOYLE, A.J.:

{¶1} On November 4, 2014, the applicant, Darllei Orr, pursuant to App.R. 26(B), applied to reopen this court's judgment in *State v. Orr*, 8th Dist. Cuyahoga No. 100841, 2014-Ohio-4680, in which this court affirmed Orr's convictions for aggravated murder, kidnapping, aggravated burglary, aggravated robbery, and having a weapon while under disability. Orr now argues that his appellate counsel was ineffective for not arguing the improprieties of a cheek swab taken for DNA identification.¹ For the following reasons, this court denies the application.

{¶2} In the present case, Orr's appellate counsel argued lack of jurisdiction because of an improper jury waiver, failure of compulsory process, sufficiency of the evidence, and manifest weight. This court also considered Orr's two supplemental pro se briefs in which he argued, inter alia, lack of jurisdiction because there was no valid complaint, violation of his right to confrontation, denial of a speedy trial, improperly inducing him to waive his right to a jury trial, and prosecutorial misconduct.

{¶3} Res judicata now properly bars this application. *See generally State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967). Res judicata prevents repeated attacks on a final judgment and applies to all issues that were or might have been litigated. In *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992), the Supreme Court ruled that res judicata may bar a claim of ineffective assistance of appellate counsel unless circumstances render the application of the doctrine unjust.

¹ On the early morning of October 10, 2011, two armed men entered a house occupied by five people. One of those, a 15-year-old girl, testified that two men pointed handguns in her face and asked if there was any money in the house. Subsequently, the intruders shot and killed a man who was living in the house. A mask found in the house after the incident contained Orr's DNA.

{¶4} Because Orr filed his own appellate brief and raised his own assignments of error, res judicata applies. Nothing prevented Orr from deducing the current argument when he could formulate arguments relating to jurisdiction, speedy trial, right to a jury, and prosecutorial misconduct. The courts have repeatedly ruled that res judicata bars an application to reopen when the appellant has filed a pro se brief. *State v. Tyler*, 71 Ohio St.3d 398, 1994-Ohio-8, 643 N.E.2d 1150; *State v. Boone*, 114 Ohio App.3d 275, 683 N.E.2d 67 (7th Dist.1996); and *State v. Hurt*, 8th Dist. Cuyahoga No. 96032, 2012-Ohio 4268. In *State v. Reddick*, 72 Ohio St.3d 88, 90-91, 647 N.E.2d 784 (1995), the Supreme Court of Ohio stated: “Neither *Murnahan* nor App.R. 26(B) was intended as an open invitation for persons sentenced to long periods of incarceration to concoct new theories of ineffective assistance of appellate counsel in order to have a new round of appeals.”

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

MARY J. BOYLE, ADMINISTRATIVE JUDGE

FRANK D. CELEBREZZE, JR., J., and
TIM McCORMACK, J., CONCUR