

[Cite as *State v. Williamson*, 2015-Ohio-5135.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION  
No. 102320

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MICHAEL WILLIAMSON

DEFENDANT-APPELLANT

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**JUDGMENT:**  
APPLICATION DENIED

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Cuyahoga County Court of Common Pleas  
Case No. CR-01-406972-A  
Application for Reopening  
Motion No. 488769

**RELEASE DATE:** December 9, 2015

**FOR APPELLANT**

Michael Williamson, pro se  
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**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
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TIM McCORMACK, P.J.:

{¶1} Michael Williamson has filed an App.R. 26(B) application for reopening and is attempting to reopen the appellate judgment rendered in *State v. Williamson*, 8th Dist. Cuyahoga No. 102320, 2015-Ohio-4482, that affirmed the trial court’s advisement of postrelease control and further found that the appeal was wholly frivolous pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). For the following reasons, we decline to reopen Williamson’s appeal.

### **Appellate Procedural History**

{¶2} Williamson has filed four separate appeals with this court in an attempt to overturn his conviction for 12 counts of rape.

{¶3} In *State v. Williamson*, 8th Dist. Cuyahoga No. 80982, 2002-Ohio-6503, Williamson appealed his conviction and sentence for the offenses of rape and raised two proposed assignments of error that involved the claims that he was unfairly prejudiced when the trial court made erroneous evidentiary rulings and trial counsel was deficient, which denied his constitutional right to the effective assistance of counsel. This court held that the two assignments of error were not well taken and affirmed Williamson’s conviction and sentence for the offenses of rape.

{¶4} In *State v. Williamson*, 8th Dist. Cuyahoga No. 99473, 2013-Ohio-3733, Williamson appealed the denial of his “motion to correct sentence” and raised seven proposed assignments of error that involved the claims that the trial court erred in not advising him of his right to a direct appeal, failed to properly impose postrelease control, failed to consider the sentencing principles set forth in R.C. 2929.11 and 2929.12, failed to determine the days of jail-time credit, entered an “incorrect” journal entry, failed to properly advise of the registration duties as a sexual predator,

and erred by not merging the 12 counts of rape at sentencing. Under the doctrine of res judicata, this court opined that with the exception of improper imposition of postrelease control, all other assignments of error were barred from review. The appeal was remanded to the trial court solely for the proper imposition of postrelease control.

{¶5} In *State v. Williamson*, 8th Dist. Cuyahoga Nos. 100563 and 101115, 2014-Ohio-3909, Williamson appealed the trial court’s nunc pro tunc journal entry with regard to the imposition of postrelease control. Williamson argued, through four proposed assignments of error, that the trial court improperly imposed postrelease control without conducting a new sentencing hearing. Williamson’s assignments of error were found to be well taken, and we remanded the appeal “for vacation of the order dated February 13, 2014 and a new sentencing hearing limited to the advisement of postrelease control.”

{¶6} In *State v. Williamson*, 8th Dist. Cuyahoga No. 102320, 2015-Ohio-4482, Williamson appealed from his sentencing hearing that was “limited to the advisement of postrelease control” as remanded by this court in *Williamson*, 8th Dist. Cuyahoga Nos. 100563 and 101115, *supra*. Because Williamson’s appointed appellate counsel filed an “*Anders*” brief pursuant to *Anders v. California*, *supra*, this court undertook an independent review of the proceedings that formed the basis of the appeal and allowed Williamson to file a pro se brief. Williamson, however, did not file a pro se brief, and we determined that:

Based upon our review of the transcript, the trial court did comply with the remand as directed by this court in *Williamson*, 8th Dist. Cuyahoga Nos. 100563 and 101115, 2014-Ohio-3909, that for the limited purpose of “advisement of postrelease control.”

We, therefore, conclude that this appeal is wholly frivolous pursuant to *Anders*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493. There are no arguable legal points on the merits of this matter. Counsel’s request to withdraw is granted, and we affirm the trial court’s judgment.

## Legal Analysis

{¶7} The doctrine of res judicata encompasses the two related concepts of claim preclusion, also known as res judicata or estoppel by judgment, and issue preclusion, also known as collateral estoppel. Claim preclusion prevents subsequent actions, by the same parties or their privies, based upon any claim arising out of a transaction that was the subject matter of a previous action. Where a claim could have been litigated in the previous suit, claim preclusion also bars subsequent actions on that matter. Issue preclusion, on the other hand, serves to prevent relitigation of any fact or point that was determined by a court of competent jurisdiction in a previous action between the same parties or their privies. Issue preclusion applies even if the causes of action differ. *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381, 1995-Ohio-331, 653 N.E.2d 226; *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.*, 81 Ohio St.3d 392, 395, 1998-Ohio-435, 692 N.E.2d 140.

{¶8} In the case sub judice, Williamson's claims of ineffective assistance of appellate counsel are barred from further review by the doctrine of collateral estoppel. The issues presently raised in support of his application for reopening were previously determined to be without merit in *Williamson*, 8th Dist. Cuyahoga No. 99473, 2013-Ohio-3733. Williamson is not permitted to relitigate those issues previously addressed and found to be without merit. *Ashe v. Swenson*, 397 U.S. 436, 445, 90 S.Ct. 1189, 25 L.Ed.2d 469, (1970); *State v. Crago*, 93 Ohio App.3d 621, 639 N.E.2d 801 (10th Dist. 1994); *State v. Day*, 8th Dist. Cuyahoga No. 67767, 1996 Ohio App. LEXIS 4847 (Nov. 2, 1995).

{¶9} Notwithstanding the application of the doctrine of collateral estoppel, we find that Williamson is attempting to employ the procedure of "bootstrapping" through his application for

reopening. This court has established that “bootstrapping,” the utilization of a subsequent order to indirectly and untimely appeal a prior order that was never directly appealed, is procedurally anomalous and inconsistent with the appellate rules that contemplate a direct relationship between the order from which the appeal is taken and the error assigned as a result of that order. *State v. Church*, 8th Dist. Cuyahoga No. 68590, 1995 Ohio App. LEXIS 4838 (Nov. 2, 1995); *see also Chapon v. Std. Contracting & Eng.*, 8th Dist. Cuyahoga No. 88959, 2007-Ohio-4306. Williamson is attempting to utilize the instant application for reopening to improperly argue ineffective assistance of appellate counsel and seek review of alleged errors that he failed to timely raise through an application for reopening that should have been filed in *Williamson*, 8th Dist. Cuyahoga No. 80982, 2002-Ohio-6503, or *Williamson*, 8th Dist. Cuyahoga No. 99473, 2013-Ohio-3733.

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

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TIM McCORMACK, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and  
MELODY J. STEWART, J., CONCUR