

[Cite as *State v. Taylor*, 2016-Ohio-377.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION  
No. 101615

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**MICHAEL TAYLOR**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
APPLICATION DENIED

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Cuyahoga County Court of Common Pleas  
Case No. CR-13-579620-B  
Application for Reopening  
Motion No. 488655

**RELEASE DATE:** February 3, 2016

**FOR APPELLANT**

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**ATTORNEYS FOR APPELLEE**

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MARY EILEEN KILBANE, J.:

{¶1} Applicant Michael Taylor has applied to reopen his direct appeal in *State v. Taylor*, 8th Dist. Cuyahoga No. 101615, 2015-Ohio-2033. In *Taylor*, this court affirmed the trial court's judgment finding that his conviction was not against the manifest weight of the evidence. *Id.* at ¶19-21. The state has opposed the application for reopening of the appeal. The application is denied for the reasons that follow.

{¶2} In order to establish a claim of ineffective assistance of appellate counsel, Taylor is required to establish that the performance of his appellate counsel was deficient and the deficiency resulted in prejudice. *Strickland v. Washington*, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), *cert. denied*, 497 U.S. 1011, 110 S.Ct. 3258, 111 L.Ed.2d 768 (1990).

{¶3} In order for this court to grant an application for reopening, Taylor 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). Taylor must prove that his counsel was deficient for failing to raise(s) the issue he now presents, as well as showing that had appellate counsel presented those claims on appeal, there was a "reasonable probability" that he would have been successful. Taylor 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, 701 N.E.2d 696 (1998).

{¶4} In *Strickland*, the United States Supreme Court held that a court's scrutiny of an attorney's work must be highly deferential. The 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. *Strickland, supra*.

{¶5} The state opposes Taylor's application on the grounds that it was untimely filed by one day and for the alternative reason that Taylor has failed to satisfy the standard for reopening.

{¶6} App.R. 26 contains a 90-day time limit for filing an application to reopen from the date that the appellate judgment was journalized. App.R. 26(B)(2)(b). The appellate judgment in *Taylor* was journalized on May 28, 2015. Therefore, the 90-day deadline for filing the application to reopen was August 26, 2015. The postmark on the envelope containing the application to reopen is dated August 24, 2015. However, the application was not filed by the clerk of the court until August 27, 2015. Therefore, the application is untimely. Taylor did not present any argument regarding good cause for the delayed filing, presumably because he did not realize there would be a four-day delay between the time the application was mailed and when it was filed. Assuming, without deciding, that the four-day delay between the mailing and filing of the application could be construed as good cause that would allow us to consider the application that was filed one day beyond the 90-day deadline, we find that Taylor has not satisfied the criteria for reopening the appeal.

{¶7} The state asserts that Taylor's application fails to comply with App.R. 26(B)(2)(c), which provides:

(2) An application for reopening shall contain all of the following:

\* \* \*

(c) One or more assignments of error or arguments in support of assignments of error that previously were not considered on the merits in the case by any

appellate court or that were considered on an incomplete record because of appellate counsel's deficient representation;

{¶8} Taylor maintains that his appellate counsel was ineffective because the sole assignment of error raised in the appeal was that his conviction was against the manifest weight of the evidence. Taylor argues that appellate counsel "neglected the facts that [his] due process rights and [his] equal protection rights were violated." Taylor maintains that appellate counsel should have attacked the victim's credibility based on evidence that allegedly supported an argument that she was "having sex for money." Taylor makes allegations that the detective never questioned the victim or her friend, T.J., about "twin brothers" whom D.T. allegedly identified to the Cleveland Clinic and Officer Hayes. Taylor indicates there was no toxicology report that would suggest D.T. was under the influence of any drug or alcohol. He maintains there is no evidence that places him at the Cleveland Puerto Rican festival where D.T. said she saw T.J. and met the twin brothers. The balance of Taylor's application summarizes D.T.'s testimony or prior statements and her lack of cooperation with police over the intervening years between the incident and his indictment.

{¶9} Taylor has not offered any law in support of his contention that his due process and equal protection rights were violated and has not identified any portion in the record where these alleged violations occurred. The substance of Taylor's application is essentially an argument that his conviction was against the manifest weight of the evidence. This court has already considered that issue at length, twice indicating that this was an extremely close case, but ultimately concluding that upon a fact-specific analysis, the conviction was not against the manifest weight of the evidence.

{¶10} For all of the foregoing reasons, Taylor has not met the standard for reopening his appeal. He has not presented any basis that could arguably support his contention that he received ineffective assistance of appellate counsel.

{¶11} The application to reopen is denied.

MARY EILEEN KILBANE, JUDGE

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FRANK D. CELEBREZZE, JR., P.J., and  
ANITA LASTER MAYS, J., CONCUR