[Cite as *State v. Brown*, 2017-Ohio-2850.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101367

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MAURICE BROWN

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case Nos. CR-13-572009-B, CR-13-573056-A,
and CR-13-576253-A
Application for Reopening
Motion No. 503847

RELEASE DATE: May 17, 2017

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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LARRY A. JONES, SR., J.:

{¶1} On January 23, 2017, the applicant, Maurice Brown, applied pursuant to App.R. 26(B), to reopen this court's judgment in *State v. Brown*, 8th Dist. Cuyahoga No. 101367, 2015-Ohio-598, in which this court affirmed his many convictions.[1] Brown argues his appellate counsel should have argued (1) that his guilty plea was involuntary because his trial counsel failed to advise him of the essential elements of the charges, (2) that his guilty plea was involuntary because the judge failed to determine that he understood the nature of the charges against him and the essential elements of those charges, and (3) that his guilty plea was involuntary when the trial judge failed to inform him that he could receive consecutive sentences. On January 27, 2017, the state of Ohio filed its brief in opposition. For the following reasons, this court denies the application to reopen.

{¶2} App.R. 26(B)(1) and (2)(b) require applications claiming ineffective assistance of appellate counsel to be filed within 90 days from journalization of the decision unless the applicant shows good cause for filing at a later time. The January

[1]Brown pled guilty to all charges in three cases: In Case No. CR-13-572009-B, one count of aggravated riot, two counts of felonious assault, one count of assault, and three counts of kidnapping; in Cuyahoga C.P. No. CR-13-573056-A, one count each of abduction and domestic violence; and in Cuyahoga C.P. No. CR-13-576253-A, two counts of aggravated murder, one count of aggravated burglary, one count of burglary, one count of murder, two counts of felonious assault, and one count of having a weapon while under disability. Many of these counts also included one- and three-year firearm specifications, notices of prior conviction, and repeat violent offender specifications. The trial judge imposed a total sentence of 37.5 years to life in prison.

2017 application was filed approximately 23 months after this court's decision. Thus, it is untimely on its face.

{¶3} In an effort to show good cause, Brown states in his supporting affidavit that he suffers from serious mental illness that causes him to become delusional and incapable of reading and writing in any understandable capacity. During the court hearings, Brown stated that he was taking Depokote for various mental conditions, including bipolar disorder and depression. Both the prosecutor and defense counsel admitted that Brown had mental health issues. Brown further stated in his affidavit that the law library at the Southern Correctional Facility was inadequate because it did not have copies of the rules of court and that the four "official" legal clerks did not know how to file an App.R. 26(B) application to reopen. Furthermore, the "jailhouse lawyers" were harassed by the law librarian and, thus, Brown could not find a "jailhouse lawyer" to help him until after the time for filing had elapsed.

{¶4} However, these explanations are insufficient. This court has held that a self-serving affidavit pleading medical incapacity does not show good cause for untimely filing. It would be all too easy for a petitioner to claim a medical excuse to show good cause for an untimely application. Thus, a claim of medical incapacity without supporting records to substantiate the medical condition, e.g., prison medical records, is not sufficient to show good cause. *State v. Gilbert*, 8th Dist. Cuyahoga No. 90856, 2009-Ohio-607, *reopening disallowed*, 2010-Ohio-4103; and *State v. Davis*, 8th Dist.

Cuyahoga Nos. 97689, 97691, and 97692, 2012-Ohio-3951, *reopening disallowed*, 2013-Ohio-5015.

{¶5} Additionally, the courts have repeatedly rejected the claim that limited access to legal materials states good cause for untimely filing. Prison riots, lockdowns, and other library limitations have been rejected as constituting good cause. *State v. Tucker*, 73 Ohio St.3d 152, 1995-Ohio-2, 652 N.E.2d 720; *State v. Kaszas*, 8th Dist. Cuyahoga Nos. 72546 and 72547, 1998 WL 598530 (Sept. 10, 1998), *reopening disallowed*, 2000 WL 1195676 (Aug. 14, 2000); *State v. Hickman*, 8th Dist. Cuyahoga No. 72341, 1998 WL 213166 (Apr. 30, 1998), *reopening disallowed*, 2000 WL 1901272 (Dec. 13, 2000); and *State v. Turner*, 8th Dist. Cuyahoga No. 55960, 1989 WL 139488 (Nov. 16, 1989), *reopening disallowed*, 2001 WL 1001014 (Aug. 20, 2001).

{¶6} Moreover, the court notes that Brown's proposed assignments of error are not persuasive. In *State v. Johnson*, 40 Ohio St.3d 130, 532 N.E.2d 1295 (1988), syllabus, the Supreme Court of Ohio ruled that the failure to inform a defendant who pleads guilty that the court may order him to serve consecutive sentences does not render the plea involuntary. Similarly, it is not necessary for the trial court to recite the elements of each crime charged. *State v. Underwood*, 4th Dist. Meigs No. 98CA11, 1999 WL 301637 (May 7, 1999). Nor does the record indicate that Brown's counsel did not review each of the charges with him. Appellate review is strictly limited to the record. *The Warder, Bushnell & Glessner Co. v. Jacobs*, 58 Ohio St. 77, 50 N.E. 97 (1898); *Carran v. Soline Co.*, 7 Ohio Law Abs. 5 (1928), and *Republic Steel Corp. v. Sontag*, 21

Ohio Law Abs. 358 (1935). "Clearly, declining to raise claims without record support cannot constitute ineffective assistance of appellate counsel." *State v. Burke*, 97 Ohio St.3d 55, 2002-Ohio-5310, 776 N.E.2d 79, ¶ 10. Claims of ineffective assistance of trial counsel that are dependent on matters outside the record are better suited for a postconviction relief petition.

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

LARRY A. JONES, SR., JUDGE

FRANK D. CELEBREZZE, JR., P.J., and
MARY J. BOYLE, J., CONCUR