[Cite as *State v. Reid*, 2023-Ohio-2217.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO v. ANTWAN J. REID	C.A. 19352 Trial Court Case No. 01-CR-243/1 & 00-CR-2151 **ORDER ON APPLICATION FOR REOPENING**

PER CURIAM:

Antwan J. Reid, pro se, has filed a "motion for determination and judgment on appeal, pursuant to Ohio Rule of Appellate Procedure 15(B), pursuant to Ohio Rule of Appellate Procedure 12(A)(1)(b), and pursuant to Ohio Rule of Appellate Procedure 3(B)." Reid argues that his appellate counsel provided ineffective assistance. We construe his motion to be an application for reopening, pursuant to App.R. 26(B). For the following reasons, Reid's application is denied.

I. Procedural History

On May 10, 2002, the trial court sentenced Reid in two unrelated cases: Montgomery C.P. No. 2000-CR-2151 and Montgomery C.P. No. 2001-CR-243/1. In Case No. 2000-CR-2151, Reid pled no contest to an aggravated robbery that had occurred on

July 16, 2000. The trial court imposed six years in prison for that aggravated robbery, to be served consecutively to his sentence in Case No. 2001-CR-243/1 and a third case. In Case No. 2001-CR-243/1, Reid was found guilty after a jury trial of aggravated murder and aggravated robbery, each with a firearm specification. The trial court imposed a life sentence for aggravated murder and a 10-year sentence for aggravated robbery, to be served consecutively to each other, to Case No. 2000-CR-2151, and to the same third case. The court also imposed two three-year terms of imprisonment on the firearm specifications. The trial court issued separate judgment entries for each case.

Reid had the same defense counsel in both cases. Counsel filed identical notices of appeal in both cases with both case numbers listed in the caption. Consequently, both appeals proceeded under a single appellate case number. Seven volumes of transcripts were prepared. The first six volumes related to the murder case; the seventh volume contained transcripts of the suppression and plea hearings in Case No. 2000-CR-2151.

Reid's appellate brief informed the court that he was "appealing the judgment and sentence of two criminal cases in Montgomery County Common Pleas Court, Case No. 2000-CA-2151 and Case No. 2001-CR-243/1." The statement of the case and statement of facts addressed both cases, and the judgment entries for both cases were attached to the brief as appendices.

Reid's seven assignments of error concerned the murder case only. The State's appellate brief highlighted this fact in its own statement of the case and asserted that, consequently, Reid's conviction in Case No. 2000-CR-2151 was not at issue. Not surprisingly, our August 1, 2003 opinion addressed only the murder case, as well. We reversed the trial court's judgment regarding the firearm specifications and ordered the

trial court to modify the judgment entry to reflect one three-year sentence on the firearm specification. We otherwise affirmed Reid's conviction. *State v. Reid*, Montgomery App. No. 19352, 2003-Ohio-4087. We did not reference Case No. 2000-CR-2151 in our opinion.

On October 24, 2003, Reid sought to reopen his direct appeal, claiming that appellate counsel had acted deficiently in failing to raise ineffective assistance of trial counsel. Reid asserted that his trial counsel had failed to adequately investigate and/or prepare his case, to adequately communicate with him, to present witnesses in his defense, and to obtain an expert witness on identification. Reid's claims were directed to his murder case only. His application recognized that he had appealed the judgments in both Case Nos. 2000-CR-2151 and 2001-CR-243/1, but he did not claim that appellate counsel was ineffective as to Case No. 2000-CR-2151, the no contest plea case. In December 2003, we denied his application for reopening.

On June 5, 2023, nearly two decades later, Reid filed the application now before us. He argues that his appellate brief on direct appeal did not comply with the rules governing the format of appellate briefs and the brief was fatally flawed because counsel failed to assign errors for Case No. 2000-CR-2151. Reid asserts that appellate counsel should have, at least, notified this court that he could find no non-frivolous issues for appeal, pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Reid further contends that our final judgment was not a final appealable order.

II. Standard for Application for Reopening and Timeliness

To warrant reopening a direct appeal, an applicant must demonstrate that "there is a genuine issue as to whether the applicant was deprived of the effective assistance of

counsel on appeal." App.R. 26(B)(5). The Ohio Supreme Court has held that the two-prong analysis set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), is the appropriate standard to assess a request for reopening under App.R. 26(B)(5). *State v. Leyh*, 166 Ohio St.3d 365, 2022-Ohio-292, 185 N.E.3d 1075, ¶ 17; *State v. Spivey*, 84 Ohio St.3d 24, 701 N.E.2d 696 (1998), citing *State v. Reed*, 74 Ohio St.3d 534, 535, 660 N.E.2d 456 (1996).

Pursuant to this standard, Reid must prove that his appellate counsel's performance was objectively unreasonable and that there was a "reasonable probability" that, but for counsel's unprofessional errors, the outcome of the appeal would have been different. *See Leyh* at ¶ 18; App.R. 26(B)(2)(d). In addressing Reid's application, we must determine whether there is a "genuine issue" as to whether he was deprived of the effective assistance of counsel on appeal. App.R. 26(B)(5). A genuine issue exists if there are "legitimate grounds" to support a claim of ineffective assistance of appellate counsel. *Leyh* at ¶ 25.

An application for reopening must be filed in the court of appeals within 90 days from the journalization of the appellate judgment, unless the applicant shows good cause for filing at a later time. App.R. 26(B)(1). Our opinion and final judgment in this case were journalized on August 1, 2003, nearly 20 years ago. Reid has not provided any explanation for the untimely filing. Accordingly, Reid's application for reopening is denied as untimely.

III. Merits of Reid's Application

Even considering the merits of Reid's application, we would find no basis to reopen his direct appeal.

At the outset, we reject Reid's suggestion that our August 1, 2003 final judgment entry was not a final appealable order. Although the final judgment addressed the trial court's "judgment" rather than "judgments," it referenced both case numbers and resolved the appeal by affirming in part, reversing in part, and remanding to the trial court. Additionally, it was signed by three judges and was time stamped. We emphasize that an appellate court may summarily affirm the trial court's judgment when an appellant fails to set forth and argue any assigned error. *E.g., Toms v. Ohio Unemp. Comp. Rev. Comm*., 2d Dist. Clark No. 2007-CA-80, 2008-Ohio-4398, ¶ 13.

Secondly, Reid's claims are barred by res judicata. "The doctrine of res judicata bars a criminal defendant from raising and litigating in any proceedings any defense or claimed lack of due process that was raised or could have been raised on direct appeal from the conviction." (Citations omitted.) *State v. Young*, 2d Dist. Montgomery No. 20813, 2005-Ohio-5584, ¶ 8. "Res judicata not only applies to claims that could have been or were raised on direct appeal, but to all postconviction proceedings in which an issue was or could have been raised." (Citations omitted.) *State v. Becraft*, 2d Dist. Clark No. 2018-CA-96, 2019-Ohio-2348, ¶ 15. Reid could have raised his current concerns in his 2003 application for reopening but did not. Consequently, he cannot raise them in this successive application.

Thirdly, Reid has not demonstrated a genuine issue of fact that he was prejudiced by his appellate counsel's failure to raise any assignments of error regarding Case No. 2000-CR-2151. Although he argues that his appellate counsel should have filed an *Anders* brief on his behalf, if not a merit brief, he has not identified any potentially meritorious assignments of error for review.

Finally, we have reviewed the record in Case No. 2000-CR-2151, including the transcripts of the suppression and plea hearings. Based on that review, we find no "reasonable probability" that the outcome of Reid's appeal would have been different had his appellate counsel either filed a merit brief or an *Anders* brief. Moreover, given the significant delay between Reid's sentencing and the filing of this application, any issues related to his sentence are likely moot.

Reid's application for reopening is denied.

SO ORDERED.

[[Applied Signature]]
CHRISTOPHER B. EPLEY, JUDGE

[[Applied Signature 2]]
RONALD C. LEWIS, JUDGE

[[Applied Signature 3]]
MARY K. HUFFMAN, JUDGE