

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

TERRELL MARTIN,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 20 MA 0044

Application to Reopen

BEFORE:

David A. D'Apolito, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:

Denied.

Atty. Paul J. Gains, Mahoning County Prosecutor, and *Atty. Ralph M. Rivera*, Assistant Prosecuting Attorney, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee and

Terrell Martin, *Pro Se*, #A772355, Belmont Correctional Institution, P.O. Box 540, St. Clairsville, Ohio 43950, Defendant-Appellant.

Dated: February 1, 2022

PER CURIAM.

{¶1} On November 24, 2021, Appellant, Terrell Martin, filed a pro se App.R. 26(B) application to reopen his direct appeal in *State v. Martin*, 7th Dist. Mahoning No. 20 MA 0044, 2021-Ohio-3163. Appellee, the State of Ohio, filed a response on December 9, 2021.

{¶2} Appellant was sentenced to 18 years to life in prison for murder, aggravated burglary, and tampering with evidence following a no contest plea. In his direct appeal, appellate counsel raised two assignments of error: (1) that Appellant was denied his constitutional rights to a speedy trial; and (2) to the effective assistance of trial counsel. *Martin, supra*, at ¶ 1. This court found no merit in either argument and affirmed the trial court's judgment on September 10, 2021. *Id.* at ¶ 48.

App.R. 26(B)(1) and (2)(b) require applications to reopen based on ineffective assistance of appellate counsel to be filed within ninety days from journalization of the decision. App.R. 26(B)(1), (2)(b); *State v. Gumm*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861. The ninety-day requirement applies to all appellants. *State v. Buggs*, 7th Dist. Mahoning Nos. 06 MA 28, 07 MA 187, 2009-Ohio-6628, ¶ 5.

If an application for reopening is not filed within the ninety day time period, an appellant must make a showing of good cause justifying the delay in filing. *State v. Dew*, 7th Dist. Mahoning No. 08 MA 62, 2012-Ohio-434.

State v. Frazier, 7th Dist. Belmont No. 16 BE 0040, 2020-Ohio-993, ¶ 5-6.

{¶3} As stated, Appellant's application for reopening was filed on November 24, 2021. Therefore, his application is timely as it was filed within the 90-day time frame of this court's September 10, 2021 decision. *Martin, supra*; App.R. 26(B)(1) and (2)(b). Upon review, however, Appellant fails to meet the standard for reopening this appeal. See *State v. Romeo*, 7th Dist. Mahoning No. 14 MA 0060, 2018-Ohio-2482, ¶ 6.

The test for ineffective assistance of counsel requires a defendant to prove (1) that counsel's performance was deficient, and (2) that the deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052 (1984). Under this test, a criminal defendant seeking to reopen an appeal must demonstrate that appellate counsel was deficient for failing to raise the issue presented in the application for reopening and that there was a reasonable probability of success had that issue been raised on appeal. [*State v.*] *Spivey*[, 84 Ohio St.3d 24,] 25 [(1998)].

* * *

Under App.R. 26(B), an applicant must set forth “(o)ne 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.” App.R. 26(B)(2)(c).

State v. Hackett, 7th Dist. Mahoning No. 17 MA 0106, 2019-Ohio-3726, ¶ 6, 9.

[Furthermore] [i]t should finally be noted that appellate counsel need not raise every possible issue in order to render constitutionally effective assistance. [*State v.*] *Tenace*, 109 Ohio St.3d 451 at ¶ 7, 849 N.E.2d 1, citing *State v. Sanders* (2002), 94 Ohio St.3d 150, 151-152, 761 N.E.2d 18. “Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues.” *Jones v. Barnes* (1983), 463 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987.

State v. Jones, 7th Dist. Mahoning No. 06 MA 17, 2008-Ohio-3352, ¶ 6.

{¶4} Appellant raises two assignments of error in his application, namely that: (1) he was denied his constitutional right to a speedy trial; and (2) his trial counsel and appellate counsel were ineffective in failing to protect his speedy trial rights. (11/24/2021

Appellant's Application for Reopening, p. 4, 11). Because Appellant's assignments are interrelated, we will address them together.

{¶5} App.R. 26(B) requires applications for reopening to be based on ineffective assistance of appellate counsel. Thus, any present argument related to ineffective assistance of trial counsel is inapplicable here. *Romeo, supra*, at ¶ 10. Further, this court notes that in Appellant's direct appeal, we found that he failed to demonstrate ineffective assistance of trial counsel. *Martin, supra*, at ¶ 46. Specifically, we stated:

Upon consideration, the record establishes that trial counsel's representation was constitutionally effective and did not affect Appellant's speedy trial rights. [Trial] [c]ounsel's performance was neither deficient nor prejudicial. Appellant fails to demonstrate ineffective assistance of [trial] counsel.

Id.

{¶6} Regarding appellate counsel, Appellant further contends that his representative provided ineffective assistance and that he was denied his right to a speedy trial. In his direct appeal, appellate counsel raised, and this court fully considered in great detail, the issue regarding Appellant's right to a speedy trial. *Id.* at ¶ 18-47. Specifically, we concluded: "Because there were multiple tolling events * * * Appellant's speedy trial clock did not reach the 270th day. Thus, Appellant's right to a speedy trial was not violated." *Id.* at ¶ 39. Therefore, we fail to see any ineffective assistance of appellate counsel warranting a reopening.

{¶7} For the foregoing reasons, Appellant has failed to comply with the requirements set forth in App.R. 26(B) and has failed to present issues that establish a colorable claim of ineffective assistance of appellate counsel.

{¶8} Accordingly, Appellant's pro se App.R. 26(B) application for reopening is hereby denied.

JUDGE DAVID A. D'APOLITO

JUDGE GENE DONOFRIO

JUDGE CAROL ANN ROBB

NOTICE TO COUNSEL

This document constitutes a final judgment entry.