[Cite as *State v. Haslam*, 2025-Ohio-1910.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JOSHUA DALE HASLAM,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 24 BE 0019

Application to Reopen Direct Appeal

BEFORE:
Cheryl L. Waite, Carol Ann Robb, Katelyn Dickey, Judges.

JUDGMENT:
Application Denied.

Atty. J. Kevin Flanagan, Belmont County Prosecutor, and *Atty. Jacob A. Manning*, Assistant Prosecutor, for Plaintiff-Appellee

Joshua Dale Haslam, Pro se, Defendant-Appellant

Dated: May 16, 2025

PER CURIAM.

{¶1} On March 7, 2025 Appellant Joshua Dale Haslam filed a pro se application for reopening of his direct appeal in which we affirmed his conviction for possession of fentanyl and aggravated trafficking in methamphetamine. A criminal defendant may apply for reopening of a direct appeal based on a claim of ineffective assistance of appellate counsel. App.R. 26(B)(1).

> It is insufficient for the applicant seeking reopening to merely allege that appellate counsel rendered ineffective assistance for failing to brief certain issues. Instead, the application must demonstrate that there is a "genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal."

State v. Messenheimer, 2024-Ohio-5017, ¶ 1 (7th Dist.), quoting App.R. 26(B)(5).

{¶2} In order to show ineffective assistance of appellate counsel, the applicant must meet a two-prong test. The applicant must first demonstrate deficient performance of counsel, and then must demonstrate resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (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. Hackett, 2019-Ohio-3726, ¶ 6 (7th Dist.), citing *State v. Spivey*, 84 Ohio St.3d 24, 25 (1998).

{¶3} "Appellate counsel need not raise every possible issue in order to render constitutionally effective assistance." *State v. Dumas*, 2016-Ohio-4799, ¶ 3 (7th Dist.). "Counsel is expected to focus on the stronger arguments and leave out the weaker ones, as this strategy is generally accepted as the most effective means of presenting a case on appeal." *Id.*

> Most cases present only one, two, or three significant questions. . . . Usually, . . . if you cannot win on a few major points, the others are not likely to help, and to attempt to deal with a great many in the limited number of pages allowed for briefs will mean that none may receive adequate attention. The effect of adding weak arguments will be to dilute the force of the stronger ones.

State v. Adams, 2012-Ohio-2719, ¶ 12 (7th Dist.), quoting *Jones v. Barnes*, 463 U.S. 745, 752 (1983).

{¶4} App.R. 26(B)(3) requires that the defendant-applicant furnish an additional copy of the application to the clerk of courts, who shall serve it on the attorney for the prosecution. There is no indication in the record that this was done. The state has not responded to the application, thus reinforcing the conclusion that App.R. 26(B)(3) was not followed. Failure to follow the procedure set forth in App.R. 26(B) will result in denial of the application. *State v. Nero*, 2003-Ohio-268, ¶ 15 (8th Dist.); *State v. Gibson*, 2004-Ohio-2150, ¶ 3 (8th Dist.); *State v. Freeman*, 2014-Ohio-5050, ¶ 4 (7th Dist.).

{¶5} Further, it is clear that Appellant has attempted to circumvent the ten-page limit of an application for reopening by using a very small font, very close line spacing, and ignoring the allowed page margins for filings on appeal. These requirements are found in App.R. 19. Appellant has used more than double the permitted amount of typed material for an application to reopen, and for this reason also the application may be stricken.

{¶6} Appellant sets forth eight potential assignments of error that he believes his appellate counsel should have raised in his direct appeal.

PROPOSED ASSIGNMENT OF ERROR NO. 1

> APPELLANT COUNSEL IS INEFFECTIVE FOR FAILING TO RAISE: THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS BECAUSE THE AFFIDAVIT WAS INSUFFICIENT TO SUPPORT A FINDING OF PROBABLE CAUSE, AND THE OFFICERS LACKED PROBABLE CAUSE IN OBTAINING THE SEARCH WARRANT'S [SIC].

{¶7} Appellant argues that the affidavits supporting two search warrants were insufficient to establish probable cause to issue the warrants. The first warrant regarded placing a GPS tracker on Appellant's vehicle. This matter was thoroughly reviewed at the April 6, 2023 hearing on the motions to suppress. Appellant believes the information in the affidavit supporting the warrant was stale (without giving any legal basis for that belief), and that the information in the affidavit was not credible. In determining the sufficiency of probable cause in an affidavit submitted in support of a search warrant, the duty of the judge or magistrate issuing the warrant is to simply "make a practical, common-

sense decision whether, given all the circumstances set forth in the affidavit before him [or her], including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. George*, 45 Ohio St.3d 325 (1989), paragraph one of the syllabus. It is clear the affidavit contained a large amount of evidence in support, including from six confidential informants, and any attempt at attacking a few isolated aspects of that evidence would not have been successful on appeal.

{¶8} Appellant also complains of the affidavit used to obtain a warrant to search 121 Brill Street in Barnesville, Ohio. Once again Appellant claims the evidence in the affidavit was stale, was not credible, and that other evidence should have been used to support issuing the warrant. Appellant acknowledges that the "affidavit supporting the warrant must evince a minimum connection between the item or place searched and the alleged criminal activity. This is not a difficult standard to meet . . . ." *State v. Schubert*, 2022-Ohio-4604, ¶ 1. Additionally, reviewing courts give a great deal of deference to a magistrate's determination of probable cause in issuing a search warrant. *State v. George*, 45 Ohio St.3d 325, 329 (1989).

{¶9} The affidavit contained all the evidence included in the GPS tracker warrant, and much more additional evidence. Once again, any attempt to isolate and discredit a few aspects of the supporting evidence could not overcome the "fair probability" standard or the deference given on appeal to a magistrate's probable cause determination. There was no error in counsel's decision not to raise Appellant's proposed issues on appeal.

PROPOSED ASSIGNMENT OF ERROR NO. 2

APPELLATE COUNSEL IS INEFFECTIVE FOR FAILING TO RAISE: THE TRIAL COURT ERRED AS A MATTER OF LAW IN OVERRULING APPELLANT'S MOTION TO SUPPRESS WHERE THE SEARCH WARRANT WAS INVALID BECAUSE THE AFFIDAVIT UPON WHICH THE SEARCH WARRANT BASED CONTAINED STALE INFORMATION WHICH FAILED TO ESTABLISH PROBABLE CAUSE.

{¶10} Appellant once again raises whether the information in the affidavits supporting both search warrants was stale and whether it was credible. Under this proposed assignment of error Appellant does cite case law that discusses what constitutes a stale affidavit offered as evidence in a search warrant, although the cases do not support Appellant's argument. Appellant cites *U.S. v. Spikes*, 159 F.3d 913 (6th Cir. 1998), for the argument that evidence supporting a search warrant must be closely related in time to the date of the search warrant. Actually, *Spikes* stands for the principle that the length of time between the events listed in the affidavit and the date of search warrant does not determine, by itself, the validity of the search warrant, particularly when the nature of the crime is protracted. *Id.* at 923. He also cites *Sgro v. United States*, 287 U.S. 206 (1932), but this case dealt with the attempted revival of an expired search warrant, which is not the issue Appellant is raising here. There was no error in counsel's decision not to raise Appellant's second proposed assignment on appeal.

PROPOSED ASSIGNMENT OF ERROR NO. 3

APPELLATE COUNSEL IS INEFFECTIVE FOR FAILING TO RAISE: TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO FILE A MOTION TO SUPPRESS THE WALLET EVIDENCE AS IT WAS CLEAR FROM THE RECORD THAT IT WAS NOT FOUND IN THE SAFE, THE POLICE OFFICER FILED A FALSE REPORT, AND TESTIFIED FALSELY THAT IT WAS.

{¶11} One aspect of the State's case was that Appellant's wallet was found in a safe in Chad Anderson's apartment. Appellant claims that the wallet was not found in the safe, that officers lied about the location of the wallet, and that the wallet should have been suppressed as evidence. Appellant argues here that trial counsel was ineffective by not trying to suppress the wallet as evidence. Appellant does not cite any constitutional or legal ground in support. The purpose of a motion to suppress is to eliminate, usually on constitutional grounds, evidence that was secured illegally. *State v. French*, 72 Ohio St.3d 446, 449 (1995). Appellant does not allege that his wallet was secured illegally. He contends that it was moved to the safe while the evidence from Chad Anderson's apartment was being collected. This matter was brought up at trial. Whether or not the State's witnesses were truthful regarding their discovery and collection of the wallet was a matter of credibility that was left up to the finder of fact to decide. *State v. Black*, 2018-Ohio-1342, ¶ 24 (7th Dist.). Appellant does not assert any legal reason for reversing the trial court judgment, and there was no error in appellate counsel's decision not to raise this issue.

PROPOSED ASSIGNMENT OF ERROR NO. 4

> APPELLATE COUNSEL IS INEFFECTIVE FOR FAILING TO RAISE: DEFENDANT-APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHEN HIS TRIAL ATTORNEY KNOWINGLY FAILED AND REFUSED TO OBJECT TO POLICE AND PROSECUTORIAL MISCONDUCT IN PRESENTING, INTRODUCING, AND ADMITTING MANUFACTURE [SIC] EVIDENCE, FALSE TESTIMONY.

{¶12} This assignment of error is simply a reframing of Appellant's third assignment. Hence, there was no error in counsel's decision not to raise this issue on appeal.

PROPOSED ASSIGNMENT OF ERROR NO. 5

> APPELLATE COUNSEL IS INEFFECTIVE FOR FAILING TO RAISE: APPELLANT WAS DENIED HIS RIGHT TO A FAIR TRIAL AS A RESULT OF PROSECUTORIAL MISCONDUCT AND STATE'S WITNESS MISCONDUCT IN VIOLATION OF APPELLANT'S FOURTEENTH AND SIXTH AMENDMENTS OF THE CONSTITUTION.

{¶13} This assignment is also simply a reframing of the third and fourth assignments. We have determined counsel was not deficient in failing to raise these on appeal.

PROPOSED ASSIGNMENT OF ERROR NO. 6

> APPELLATE COUNSEL IS INEFFECTIVE FOR FAILING TO RAISE: THE TRIAL COURT IMPROPERLY SENTENCED THE DEFENDANT FOR AN AGGRAVATED FELONY OF THE FIRST DEGREE RATHER THAN A THIRD DEGREE FELONY WHERE THE VERDICT FAILED TO EITHER STATE THE DEGREE OF THE OFFENSE OR THAT THE ADDITIONAL ELEMENT OF CONVICTION OF A FELONY POSSESSION OF FENTANYL AND AGGRAVATED TRAFFICKING IN METHAMPHETAMINE OFFENSE WAS PRESENT. THUS, PURSUANT TO R.C. 2925.03(C)(9)(D), THE OFFENSE IS A THIRD DEGREE FELONY.

{¶14} Appellant argues that he should have been sentenced on count two only for a third degree felony, rather than a first degree felony, because the jury verdict form did not specify the degree of the offense. Appellant did not attach the jury forms to his application to corroborate his argument. Appellant cites a section of R.C. 2945.75, which states: "A guilty verdict shall state either the degree of the offense of which the offender is found guilty, or that such additional element or elements are present. Otherwise, a guilty verdict constitutes a finding of guilty of the least degree of the offense charged." Appellant fails to refer to the first part of the statute, which states: "When the presence of one or

more additional elements makes an offense one of more serious degree . . . ." R.C. 2945.75 only applies when additional elements are needed to increase the degree of the offense. When no additional element is required, R.C. 2945.75 does not apply. *State v. Kessler*, 2025-Ohio-1041, ¶ 78 (5th Dist.). The indictment in this case specified the necessary elements in order to charge Appellant with first degree felony possession of fentanyl-related compound, and the jury convicted on the charged offense. There was no error in counsel's decision not to pursue this issue on appeal.

PROPOSED ASSIGNMENT OF ERROR NO. 7

APPELLATE COUNSEL IS INEFFECTIVE FOR FAILING TO RAISE: THE EVIDENCE IS INSUFFICIENT AS A MATTER OF LAW TO SUSTAIN A CONVICTION AND IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶15} Appellant argues that the evidence presented by the State was insufficient to establish the elements of the crimes, and that the verdict is against the manifest weight of the evidence. "Sufficiency of the evidence is a legal question dealing with adequacy." *State v. Pepin-McCaffrey*, 2010-Ohio-617, ¶ 49 (7th Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). "Sufficiency is a term of art meaning that legal standard which is applied to determine whether a case may go to the jury or whether evidence is legally sufficient to support the jury verdict as a matter of law." *State v. Draper*, 2009-Ohio-1023, ¶ 14; (7th Dist.); *Thompkins* at 386. In reviewing a sufficiency of the evidence argument, the evidence and all rational inferences are evaluated in the light most favorable to the prosecution. *State v. Goff*, 82 Ohio St.3d 123, 138 (1998).

{¶16} Weight of the evidence concerns "the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other." (Emphasis deleted.) *Thompkins* at 387. The appellate court reviews the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether, in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. *State v. Lang*, 2011-Ohio-4215, ¶ 220, citing *Thompkins* at 387. "[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. Hunter*, 2011-Ohio-6524, ¶ 118, quoting *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus.

{¶17} Appellant argues that there was no direct evidence that he owned the confiscated drugs. He argues there was no direct evidence that the scales, baggies, syringes, or safe were his. He also believes that some of the state's evidence was false and could not be believed. The state's case was largely built on circumstantial evidence, and "[c]ircumstantial evidence and direct evidence inherently possess the same probative value . . . ." *State v. Prieto*, 2016-Ohio-8480, ¶ 34 (7th Dist.), citing *In re Washington*, 81 Ohio St.3d 337, 340 (1998). It was up to the jury to decide which witnesses to believe, and the jury believed the state's witnesses. Counsel was not deficient for failing to pursue these issues on appeal.

PROPOSED ASSIGNMENT OF ERROR NO. 8

APPELLATE COUNSEL IS INEFFECTIVE FOR FAILING TO RAISE: SENTENCE WAS CONTRARY TO LAW WHERE THE TRIAL COURT COMMITTED PLAIN ERROR BY INCORRECTLY IMPOSING

> SENTENCED [SIC] ON ALLIED OFFENSES FOR POSSESSION OF FENTANYL AND FOR AGGRAVATED TRAFFICKING IN METHAMPHETAMINE.

{¶18} Appellant claims, without any legal support, that counts two and three in the indictment were allied offenses. He cites R.C. 2941.25(A), which states that a person cannot be convicted of more than one allied offense of similar import. Appellant does not attempt to define "allied offenses." Allied offense analysis has a long, complicated history in Ohio, but since Appellant offers no legal basis to support this assignment of error, the analysis can be simplified, here. "To determine whether two offenses are allied offenses that merge into a single conviction, a court must evaluate three separate factors: the conduct, the animus, and the import." *State v. Harris*, 2016-Ohio-3424, ¶ 42 (10th Dist.), citing *State v. Ruff*, 2015-Ohio-995, ¶ 25.

> If any of the following is true, the offenses cannot merge and the defendant may be convicted and sentenced for multiple offenses: (1) the offenses are dissimilar in import or significance—in other words, each offense caused separate, identifiable harm, (2) the offenses were committed separately, and (3) the offenses were committed with separate animus or motivation.

Id. Allied offense determination is largely determined by the specific facts of the case. *Id.* at ¶ 26.

{¶19} The fact that counts two and three involved two different drugs is enough for us to conclude that an allied offense argument would not have prevailed on appeal.

"With respect to offenses involving multiple types of drugs, courts have recognized that different groups of drugs can pose separate and identifiable harms." *State v. Johnson*, 2025-Ohio-1009, ¶ 50 (3d Dist.).

{¶20} Appellant has not indicated that trial counsel raised any objections to the sentences imposed, and therefore, the alleged error here would only be reviewed for plain error, which is a very difficult standard to meet. *State v. Rogers*, 2015-Ohio-2459, ¶ 21. Plain error is to be utilized with extreme caution, and only to prevent a manifest miscarriage of justice. *State v. Long*, 53 Ohio St.3d 91 (1978), paragraph two of the syllabus. A reviewing court will not construct a plain error analysis on a defendant's behalf if it is not raised. *State v. Williams*, 2025-Ohio-1345, ¶ 45 (1st Dist.).

{¶21} For all of the above reasons, there was no error in appellate counsel's decision not to pursue these issues.

{¶22} None of Appellant's proposed assignments of error would be likely to prevail on appeal, and appellate counsel was not ineffective to concentrate on a different issue that, in counsel's professional opinion, had more likelihood of success. The record reveals no ineffective assistance of appellate counsel warranting a reopening. For both the procedural and substantive reasons set forth above, Appellant's App.R. 26(B) application for reopening is hereby denied.

JUDGE CHERYL L. WAITE

JUDGE CAROL ANN ROBB

JUDGE KATELYN DICKEY

NOTICE TO COUNSEL

This document constitutes a final judgment entry.