

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Nos. 112886 and 112888
	:	
v.	:	
	:	
ANTONIO L. CLARK,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: June 11, 2025

Cuyahoga County Court of Common Pleas
Case Nos. CR-22-670403-A and CR-22-671900-A
Application for Reopening
Motion No. 583134

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Owen Knapp Assistant Prosecuting
Attorney, *for appellee*.

Antonio Clark, *pro se*.

LISA B. FORBES, J.:

{¶ 1} Applicant Antonio L. Clark, pro se, seeks to reopen his appeal in *State v. Clark*, 2024-Ohio-3186 (8th Dist.), in which this court affirmed Clark's convictions on two counts of burglary following a combined jury trial in three cases.

Because his application is untimely and Clark has not made a showing of good cause for the untimely filing, his application to reopen the appeals is denied.

I. Procedural History

{¶ 2} In 2022, Clark was indicted in three cases for crimes he allegedly committed in 2016, stemming from the alleged burglaries of three victims' homes. The three cases were consolidated for trial. A jury trial commenced in May 2023. The jury found Clark guilty of one count of burglary in Cuyahoga C.P. No. CR-22-670403-A and one count of burglary in Cuyahoga C.P. No. CR-22-671900-A. The jury found Clark not guilty of the charges related to the burglary of the third victim's home in Cuyahoga C.P. No. CR-22-670402-A.

{¶ 3} The trial court sentenced Clark to a four-year prison term on each count, to be served concurrently. Clark appealed his convictions in separate appeals, which were consolidated for briefing, hearing, and disposition. On appeal, Clark argued that (1) the prosecutor's use of a preemptory challenge to excuse one of the only two Black jurors on the prospective jury panel, without the court addressing whether the prosecutor's proffered reason was a pretext for racial discrimination, violated Clark's constitutional right to equal protection, and (2) Clark's convictions for burglary were against the manifest weight of the evidence. The panel overruled Clark's assignments of error and affirmed his convictions. *Clark* at ¶ 15-49.

{¶ 4} On March 26, 2025, Clark, pro se, filed a delayed application for reopening pursuant to App.R. 26(B) and *State v. Murnahan*, 63 Ohio St.3d 60 (1991), based on claims of ineffective assistance of appellate counsel. In his

application, Clark asserts that he was denied the effective assistance of appellate counsel because appellate counsel failed to raise the following issues in his appeals: (1) trial counsel was ineffective for failing investigate and/or raise a statute-of-limitations defense with respect to the indictment (proposed assignment of error No. 1); (2) trial counsel was ineffective for (a) waiving Clark's presence during the questioning of a juror who stated she was feeling "conflicted" regarding "deciding [his] fate" in adult court given that Clark was a juvenile when the alleged crimes occurred, (b) failing to object to the presence of another attorney during the questioning of the juror, (c) failing to object to the removal of the juror, and (d) failing to oppose the State's motion to remove the juror (proposed assignments of error Nos. 2, 4, 5, 6); (3) trial counsel was ineffective for not challenging the admissibility of fingerprint evidence (proposed assignment of error No. 3); (4) trial counsel was ineffective for not requesting a Crim.R. 29 acquittal on the burglary counts given that he was found not guilty on other counts (proposed assignment of error No. 7); and (5) trial counsel was ineffective for not filing a motion for judgment notwithstanding the verdict as to a count on which the jury could not reach a verdict (proposed assignment of error No. 8).

{¶ 5} The State opposed Clark's application for reopening on the grounds that (1) it was untimely and Clark "has not provided good reasons for the delay" and (2) his proposed eight assignments of error "would have failed on appeal had they been raised" such that Clark "has failed to show his appellate counsel was ineffective for not raising them."

II. Law and Analysis

{¶ 6} Under App.R. 26(B), a defendant in a criminal case may apply to reopen his or her direct appeal of the judgment of conviction and sentence based on a claim of ineffective assistance of appellate counsel. The application must be filed within 90 days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time. App.R. 26(B)(1), (2)(b); *State v. Wogenstahl*, 2024-Ohio-2714, ¶ 1, 16 (“App.R. 26(B)(1) requires an applicant to file an application to reopen within 90 days of the date of journalization of the court of appeals’ judgment or to ‘show good cause’ for the delay.”).

{¶ 7} In this case, Clark is attempting to reopen the appellate judgment that was journalized on August 22, 2024. He filed his application to reopen the appeals on March 26, 2025 — more than 90 days after the judgment was journalized. Although Clark acknowledges in his application that an applicant must show good cause for an untimely filing, he offers no explanation whatsoever for the delay and, therefore, has not made a showing of good cause for the untimely filing as required under App.R. 26(B)(1) and (2)(b).

{¶ 8} “The 90-day requirement in the rule is ‘applicable to all appellants.’” *State v. LaMar*, 2004-Ohio-3976, ¶ 9, quoting *State v. Winstead*, 74 Ohio St.3d 277, 278 (1996). “Consistent enforcement of the rule’s deadline by the appellate courts in Ohio protects on the one hand the state’s legitimate interest in the finality of its judgments and ensures on the other hand that any claims of ineffective assistance

of appellate counsel are promptly examined and resolved.” *State v. Gumm*, 2004-Ohio-4755, ¶ 7.

{¶ 9} “Lack of effort or imagination, and ignorance of the law . . . do not automatically establish good cause for failure to seek timely relief under App.R. 26(B).” *LaMar* at ¶ 9, quoting *State v. Reddick*, 72 Ohio St.3d 88, 91 (1995). Indeed, even “identifying meritorious claims,” i.e., “dead-bang winners,” is not sufficient to establish good cause for an untimely filing. *See, e.g., State v. Williams*, 2025-Ohio-614, ¶ 7-8 (8th Dist.) (noting that in *Lamar* and *Gumm*, the Ohio Supreme Court held that the 90-day deadline for filing applications to reopen an appeal under App.R. 26(B) “must be strictly enforced”).

{¶ 10} “The existence of good cause is a threshold issue that must be established before an appellate court may reach the merits of a claim of ineffective assistance of appellate counsel.” *Wogenstahl*, 2024-Ohio-2714, at ¶ 21, citing *State v. Farrow*, 2007-Ohio-4792, ¶ 7 (holding that the court of appeals properly declined to reach the merits of the appellant’s claim of ineffective assistance of counsel when the appellant failed to establish good cause for the delay in filing the application). “Where an application for reopening is not timely filed and the application fails to allege good cause for the delay, the application must be denied.” *State v. Chandler*, 2022-Ohio-1391, ¶ 9 (8th Dist.). Here, Clark offers no reason why he could not timely file his application for reopening. Because Clark has failed to show good cause for his untimely filing, his application to reopen his appeal must be denied.

See, e.g., Wogenstahl at ¶ 21; *State v. Lenhart*, 2024-Ohio-462, ¶ 10 (8th Dist.); *Chandler* at ¶ 9; *State v. Thompson*, 2021-Ohio-3105, ¶ 28 (8th Dist.).

{¶ 11} Further, claims of ineffective assistance of appellate counsel are evaluated under the same standard applied to claims of ineffective assistance of trial counsel announced in *Strickland v. Washington*, 466 U.S. 668 (1984). *State v. Leyh*, 2022-Ohio-292, ¶ 17. Under this standard, “an applicant must show that (1) appellate counsel’s performance was objectively unreasonable . . . and (2) there is ‘a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” *Leyh* at ¶ 18, quoting *Strickland* at 687, 694.

{¶ 12} App.R. 26(B) establishes a two-stage procedure for adjudicating claims of ineffective assistance of appellate counsel. *Id.* at ¶ 19. An applicant must first make a threshold showing that appellate counsel was ineffective. *Id.* at ¶ 19, 35. An application for reopening “shall be granted if there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal.” *Id.* at ¶ 21, quoting App.R. 26(B)(5). “The burden is on the applicant to demonstrate a ‘genuine issue’ as to whether there is a ‘colorable claim’ of ineffective assistance of appellate counsel.” *Leyh* at ¶ 21, citing *State v. Spivey*, 84 Ohio St.3d 24, 25 (1998). “[A]ppellate counsel need not raise every possible issue in order to render constitutionally effective assistance.” *State v. Tenace*, 2006-Ohio-2987, ¶ 7, citing *Jones v. Barnes*, 463 U.S. 745, 751 (1983), and *State v. Sanders*, 94 Ohio St.3d 150, 151-152 (2002).

{¶ 13} If the applicant makes the required threshold showing, then the application shall be granted and the appeal reopened. *Leyh* at ¶ 25. The matter then “proceeds to the second stage of the procedure, which ‘involves filing appellate briefs and supporting materials with the assistance of new counsel, in order to establish that prejudicial errors were made in the trial court and that ineffective assistance of appellate counsel in the prior appellate proceedings prevented these errors from being presented effectively to the court of appeals.’” *Leyh* at ¶ 22, quoting 1993 Staff Notes to App.R. 26(B).

{¶ 14} Clark does not support his eight proposed assignments of error with argument and analysis that demonstrates the existence of a genuine issue of a colorable claim of ineffective assistance of appellate counsel as to the proposed assignments of error. “Merely reciting assignments of error . . . without presenting legal argument and analysis” explaining how appellate counsel’s performance was allegedly deficient and how the applicant was allegedly prejudiced thereby “is not sufficient to support an App.R. 26(B) application for reopening.” *State v. Abraham*, 2025-Ohio-1446, ¶ 18 (8th Dist.) (an applicant’s “laundry list of complaints” regarding his trial “does not fulfill the requisites of App.R. 26(B)”), quoting *State v. Townsend*, 2022-Ohio-4398, ¶ 7 (8th Dist.), citing *State v. Gaughan*, 2009-Ohio-2702 (8th Dist.); see also *State v. Pennington*, 2025-Ohio-1445, ¶ 14 (8th Dist.) (application that “merely list[ed] errors, rather than argue and develop them with legal authority other than a conclusory statement” was “defective”).

{¶ 15} Accordingly, Clark’s application is denied.

LISA B. FORBES, JUDGE

DEENA R. CALABRESE, J., CONCURS

MARY EILEEN KILBANE, P.J., NOT PARTICIPATING