

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 115264
 v. :
 :
 MARK HALL, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: August 19, 2026

Cuyahoga County Court of Common Pleas
Case No. CR-24-695031-A
Application for Reopening
Motion No. 596056

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Kristen L. Hatcher, Assistant Prosecuting Attorney, *for appellee*.

Mark Hall, *pro se*.

TIMOTHY W. CLARY, J.:

{¶ 1} Mark Hall (“Hall”), *pro se*, has filed an 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. Hall is attempting to reopen

this court’s judgment in *State v. Hall*, 2026-Ohio-1042 (8th Dist.), in which this court affirmed Hall’s convictions and sentence. For the reasons that follow, we deny Hall’s application to reopen the appeal.

{¶ 2} In September 2024, Hall was named in a ten-count indictment in Cuyahoga C.P. No. CR-24-695031-A, charging him two counts of rape (Counts 1 and 2), two counts of attempted rape (Count 3 and 4), two counts of kidnapping (Counts 5 and 6), a single count of felonious assault (Count 7), two counts of strangulation (Counts 8 and 9), and a single count of operating a motor vehicle under the influence of drugs or alcohol (“OVI”) (Count 10). Several of the charges included repeat-violent-offender (“RVO”) specifications, sexually violent predator (“SVP”) specifications, and notice-of-prior-conviction (“NPC”) specifications, and one count of strangulation included a furthermore clause. The indictment stemmed from allegations that Hall physically and sexually assaulted the alleged victim, M.A., in August 2024.

{¶ 3} Following a jury trial, Hall was convicted of two counts of kidnapping (Counts 5 and 6), two counts of strangulation (Counts 8 and 9), and single counts of rape (Count 1), attempted vaginal rape (Count 3), felonious assault (Count 7), and OVI (Count 10). The jury subsequently found that Hall was a sexually violent predator, as alleged in the indictment.

{¶ 4} In May 2025, Hall was sentenced to an aggregate prison term of “life imprisonment with parole eligibility after serving a full 39 years of imprisonment.” Hall was also classified as a Tier III sex offender.

{¶ 5} In June 2025, Hall filed a direct appeal from his convictions and sentence. Therein, Hall raised seven assignments of error, arguing (1) the State failed to present sufficient evidence to support a conviction for each offense, (2) his convictions are against the manifest weight of the evidence, (3) he was denied his right to effective assistance of counsel, (4) the trial court erred by admitting highly prejudicial and inadmissible evidence during the SVP hearing, (5) the trial court erred by refusing to provide jury instructions on lesser-included and inferior offenses, (6) the trial court erred by failing to merge allied offenses of similar import for the purposes of sentencing, and (7) the trial court’s imposition of consecutive sentences was contrary to law. Upon review, this court found no merit to Hall’s claims and affirmed the trial court’s judgment. *State v. Hall*, 2026-Ohio-1042 (8th Dist.).

{¶ 6} On April 29, 2026, Hall filed a timely application to reopen his appeal. However, this court struck the original application because it exceeded the ten-page limitation established by App.R. 26(B). With leave of court, Hall filed a complying, amended application to reopen on June 5, 2026. The amended application does not set forth definitive, proposed assignments of error as contemplated under App.R. 26(B)(2)(c). Instead, Hall generally argues that appellate counsel rendered ineffective assistance of counsel by failing to challenge (1) trial counsel’s failure to challenge the credibility of Hall’s accuser, (2) the denial of Hall’s rights to a 90-day speedy trial, full discovery, a suppression hearing, and “facial grooming prior to trial,” and (3) trial counsel’s erroneous legal advice regarding a possible plea, which

caused Hall to doubt future advice from counsel. Hall further suggests that appellate counsel was ineffective for failing to speak with him in preparation for his appeal.

{¶ 7} On July 27, 2026, the State filed a brief in opposition to the amended application for reopening, arguing that Hall “has failed to show that there is a genuine issue that he was deprived of the effective assistance of counsel on appeal.”

II. Law and Analysis

A. Standard of Review

{¶ 8} 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 ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time. App.R. 26(B)(1).

{¶ 9} App.R. 26(B) establishes a two-stage procedure for adjudicating claims of ineffective assistance of appellate counsel. *State v. Leyh*, 2022-Ohio-292, ¶ 19. An applicant must first make a threshold showing that appellate counsel was ineffective. *Id.* at ¶ 19, 35. At this stage, an applicant is “not required to conclusively establish ineffective assistance of appellate counsel[.]” *Id.* at ¶ 35. Rather, “[t]he burden is on the applicant to demonstrate a ‘genuine issue’ as to whether there is a ‘colorable claim’ of ineffective assistance of appellate counsel.” *Id.* at ¶ 21, quoting *State v. Spivey*, 84 Ohio St.3d 24, 25 (1998).

{¶ 10} If the applicant makes the required threshold showing, demonstrating that “there is at least a genuine issue — that is, legitimate grounds —

to support the claim that the applicant was deprived of the effective assistance of counsel on appeal,” then the application shall be granted and the appeal reopened. *Id.* at ¶ 25, citing App.R. 26(B)(5). 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.’” *Id.* at ¶ 22, quoting 1993 Staff Notes to App.R. 26(B).

{¶ 11} Claims of ineffective assistance of appellate counsel under App.R. 26(B) are subject to the two-pronged analysis enunciated in *Strickland v. Washington*, 466 U.S. 668 (1984). See *State v. Simpson*, 2020-Ohio-6719, ¶ 14, *id.* at ¶ 23 (O’Connor, C.J., concurring). In accordance with the *Strickland* analysis, 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.” *Smith v. Robbins*, 528 U.S. 259, 285-286 (2000). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland* at 694.

{¶ 12} In considering Hall’s application, we are mindful that appellate counsel is afforded deference in determining which issues to argue on appeal. *State v. Burke*, 2002-Ohio-5310, ¶ 7. As this court has previously explained:

With respect to claims of ineffective assistance of appellate counsel, the United States Supreme Court has upheld the appellate advocate’s prerogative to decide strategy and tactics by selecting the most

promising arguments and focusing on one central issue or, at most, a few key issues. *State v. Barrow*, 2015-Ohio-4579, ¶ 7 (8th Dist.), citing *Jones v. Barnes*, 463 U.S. 745, 751-52 (1983). See also *State v. Ware*, 2014-Ohio-815, ¶ 5 (8th Dist.) (“Appellate counsel cannot be considered ineffective for failing to raise every conceivable assignment of error on appeal.”).

State v. Doumbas, 2016-Ohio-956, ¶ 6 (8th Dist.).

B. Credibility of the Accuser

{¶ 13} In the first proposed assignment of error, Hall argues appellate counsel was ineffective for not advancing an assignment of error challenging trial counsel’s failure to impeach his accuser’s credibility, including trial counsel’s failure to obtain critical evidence that established his accuser’s actual state of mind on the night of the alleged incident.

{¶ 14} Upon review, we find no merit to Hall’s suggestion that trial counsel failed to challenge the credibility of his accuser. A review of the record reveals that M.A. was thoroughly cross-examined by trial counsel and the veracity of her testimony, including the implications of her alleged behavior and intoxication on the night in question, was repeatedly addressed by counsel throughout the trial. Because the bulk of trial counsel’s defense focused on M.A.’s truthfulness, or alleged lack thereof, we find Hall has failed to present a viable claim of ineffective assistance of appellate counsel regarding M.A.’s credibility. *State v. Stewart*, 2011-Ohio-1667, ¶ 4 (8th Dist.) (“[A]ppellate counsel is not required to raise and argue assignments of error that are meritless.”).

{¶ 15} With that stated, we further note that the credibility of M.A.’s testimony was previously raised and argued by appellate counsel on direct appeal. Specifically, appellate counsel argued that Hall’s convictions were not supported by the manifest weight of the evidence because (1) M.A.’s version of events “was not believable,” and (2) her testimony was contradicted by the physical evidence presented at trial. Ultimately, this court rejected appellate counsel’s argument, finding “Halls convictions are not against the manifest weight of the evidence simply because the jury chose to believe M.A.’s version of the events rather than the appellant’s story.” *Hall* at ¶ 124.

{¶ 16} This court has routinely recognized that in an application for reopening, “[r]es judicata bars the relitigation of an issue that was previously addressed, even if cast in a slightly different form.” *State v. Robinson*, 2022-Ohio-3033, ¶ 10 (8th Dist.), quoting *State v. Barnes*, 2020-Ohio-4988, ¶ 13 (8th Dist.). Thus, “issues previously addressed on appeal are not subject to a second review in reopening.” *Id.* Because the credibility of the State’s witnesses was fully considered on appeal, we decline Hall’s request to reexamine the weight of the evidence supporting his convictions.

{¶ 17} Finally, to the extent Hall challenges the scope of trial counsel’s pretrial preparation and investigation, we find his argument relies substantially on statements or other materials that are not part of the trial record. For this reason, it was proper for appellate counsel to disregard the argument. Appellate review is strictly limited to the record. Thus, “a reviewing court cannot add matter to the

record that was not part of the trial court’s proceedings and then decide the appeal on the basis of the new matter.” *State v. Ishmail*, 54 Ohio St.2d 402 (1978), paragraph one of the syllabus. “Nor can the effectiveness of appellate counsel be judged by adding new matter to the record and then arguing that counsel should have raised these new issues revealed by the newly added material.” *State v. Moore*, 2001-Ohio-1892, ¶ 5. As such, “declining to raise claims without record support cannot constitute ineffective assistance of appellate counsel.” *State v. Burke*, 2002-Ohio-5310, ¶ 10.

{¶ 18} In this case, the record does not contain specific information regarding trial counsel’s pretrial performance or the materials and statements Hall allegedly urged trial counsel to introduce on his behalf. Under these circumstances, appellate counsel could not have successfully challenged trial counsel’s preparation and investigation in the direct appeal because such claim would require speculation or consideration of evidence that is outside of the record. *See State v. Brown*, 2022-Ohio-3032, ¶ 14 (8th Dist.) (“It is well settled that a court cannot infer a failure to investigate from a silent record.”); *State v. Lenard*, 2018-Ohio-4847, ¶ 12 (8th Dist.) (“Allegations of ineffectiveness based on facts not appearing in the trial record must be reviewed through post-conviction remedies and cannot be raised through an App.R. 26(B) application for reopening.”).

{¶ 19} Based on the foregoing, we find Hall has not shown a colorable claim of ineffective assistance of appellate counsel. Accordingly, the first proposed assignment of error does not provide legitimate grounds for reopening Hall’s appeal.

C. Denial of Rights

{¶ 20} In the second proposed assignment of error, Hall argues appellate counsel was ineffective for failing to advance an assignment of error challenging the denial of his rights to a speedy trial, full discovery, a suppression hearing, and facial grooming prior to trial. Beyond a single, conclusory sentence, Hall does not support this proposed assignment of error with legal arguments and authorities; rather he just states the argument. Under these circumstances, this court has no basis to assess the merits of Hall's claims.

{¶ 21} “Merely reciting assignments of error, without demonstrating prejudice and presenting legal argument and analysis, is not sufficient to support an App.R. 26(B) application for reopening.” *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.) (holding that application that “merely list[ed] errors, rather than argue and develop them with legal authority other than a conclusory statement” was “defective”). In the absence of specific legal arguments, this court will not second guess appellate counsel's exercise of professional judgment. Accordingly, we find the second proposed assignment of error does not provide legitimate grounds for reopening Hall's appeal.

D. Deficient Legal Advice

{¶ 22} In the third proposed assignment of error, Hall argues appellate counsel was ineffective for failing to advance an assignment of error challenging trial counsel's allegedly erroneous legal advice during pretrial plea negotiations. Hall

contends that trial counsel's inaccurate advice regarding the availability of probation violated "the client/attorney trust" and caused him to second guess counsel's advice during the remainder of the criminal proceedings. Hall suggests that his deteriorated relationship with trial counsel led to his decision to keep his jail clothing on during trial and in the presence of the jury.

{¶ 23} In this case, appellate counsel pursued claims of ineffective assistance of trial counsel in Hall's direct appeal, including arguments that (1) counsel failed to have Hall wear street clothes rather than the jail-issued uniform during trial, (2) counsel failed to assert the defense of involuntary intoxication, and (3) counsel did not seek dismissal of the SVP specification associated with Count 5, kidnapping. Ultimately, this court found no merit to these claims, noting that Hall routinely ignored the advice of trial counsel.

{¶ 24} To the extent Hall now claims that appellate counsel should have raised an additional claim of ineffective assistance of counsel regarding trial counsel's alleged violation of trust, we find such an argument would have relied significantly on off-the-record conversations between Hall and trial counsel. We recognize that Hall briefly discussed his frustrations with trial counsel's performance during the SVP hearing held on May 7, 2025. However, the specific nature of his conversations with counsel regarding a potential plea deal and sentence do not appear in the record. Again, "declining to raise claims without record support cannot constitute ineffective assistance of appellate counsel." *State v. Anderson*, 2018-Ohio-82, ¶ 13 (8th Dist.). Moreover, Hall's application does not

explain why the advice provided by trial counsel regarding a potential plea was erroneous or how he was prejudiced by counsel's performance in this regard. Under these circumstances, we find the third proposed assignment of error does not provide legitimate grounds for reopening Hall's appeal.

E. Appellate Counsel Preparation

{¶ 25} In the final proposed assignment of error, Hall argues appellate counsel rendered ineffective assistance of counsel by failing to consult with him in preparation for the appellate proceedings. We find no merit to Hall's position.

{¶ 26} This court has previously stated that “not contacting the appellant is not,” in and of itself, “ineffective assistance of appellate counsel” for purposes of an application for reopening an appeal. *State v. Morris*, 2024-Ohio-6190, ¶ 18 (8th Dist.), quoting *State v. Thomas*, 2015-Ohio-4486, ¶ 6 (8th Dist.); see also *State v. Anderson*, 2018-Ohio-82, ¶ 16 (8th Dist.) (Appellant's “dissatisfaction with his appellate counsel, in not communicating with him more, and not sending him a copy of the transcript, is not considered ineffective assistance of appellate counsel for purposes of App.R. 26(B).”). Accordingly, we find the fourth proposed assignment of error does not provide legitimate grounds for reopening Hall's appeal.

III. Conclusion

{¶ 27} Based on the foregoing, we find Hall has failed to present a colorable claim of ineffective assistance of appellate counsel. Accordingly, the application for reopening is denied.

{¶ 28} Application denied.

TIMOTHY W. CLARY, JUDGE

EMANUELLA D. GROVES, P.J., and
MICHAEL JOHN RYAN, J., CONCUR