IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

State of Ohio,

Plaintiff-Appellee,

v.

David K. Horsley,

Defendant-Appellant.

Case No. 99CA33

ENTRY DENYING APPLICATION TO REOPEN

{¶1} Appellant, David K. Horsley, filed his fourth application to reopen his appeal pursuant to App.R. 26(B). Mr. Horsley previously filed three similar motions which were denied in 2021, 2022, and 2023, and an application for reconsideration, which was also denied. In support of his motion, Mr. Horsley makes a similar argument to those made in his last four filings: that he "signed a motion to withdrawal an appeal without being properly advised to the merits of his case by [his] counsel on appeal of right due to withdrawal of plea counsel's deficient performance." The State did not file a response.

{¶2} Under App.R. 26(B)(2)(b) the application to reopen must contain "[a] showing of good cause for untimely filing if the application is filed more than ninety days after journalization of the appellate judgment." Mr. Horsely filed his fourth application to reopen his appeal more than 23 years past the time provided in App.R. 26(B)(1). In support of his motion for delayed reopening Mr. Horsley claims that "if not for Withdrawal of Plea Counsel's failure to properly certify a Praecipe of the Transcript of the Record a substantive review of the case for merits would have occurred on direct appeal and would have resulted in my plea being withdrawn." On the contrary, Mr.

APP A

Horsley filed an appeal on November 15, 1999 that included a motion for the preparation of a complete transcript at the state's expense and a praecipe ordering the court reporter to prepare the transcripts. However, just nine days later, Mr. Horsley filed an "*agreed* entry of withdrawal of notice of appeal" signed by Mr. Horsley. (Emphasis added.) It is inconceivable that a court reporter could prepare the transcripts and counsel could review them within nine days of the filing of the notice of appeal. Nonetheless, Mr. Horsley voluntarily chose to withdraw his appeal, thereby foregoing any chance his counsel may have had to complete "a substantive review of the case for merits." Because Mr. Horsely did not provide a showing of good cause for his over 23-year delay his application must be denied.

{¶3} Even if Mr. Horsley had filed a timely application, "[n]either App.R. 26(B) nor *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204, provides for second and subsequent applications for reopening." *State v. Slagle*, 97 Ohio St.3d 332, 2002-Ohio-6612, 779 N.E.2d 1041, ¶ 7. Moreover, the Supreme Court of Ohio held in *Slagle* that the doctrine of res judicata applies to bar new claims of ineffective assistance of counsel that could have been raised in an initial application to reopen. *Id.* at ¶ 6-7. See also *State v. Sowards*, 4th Dist. Gallia No. 18CA2, 2018-Ohio-4173, ¶ 16. In *Sowards*, we stated as follows:

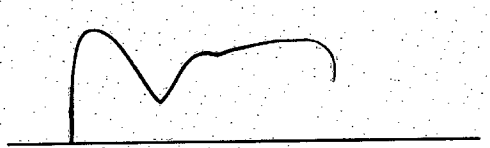
> "App.R. 26(B) is not 'an open invitation for persons sentenced to long periods of incarceration to concoct new theories of ineffective assistance of appellate counsel in order to have a new round of appeals.' " *Sowards* at ¶ 16, quoting *State v. Sowards*, 4th Dist. Gallia No. 06CA13 (Nov. 18, 2017) (webcite unavailable), in turn quoting *State v. Reddick*, 72 Ohio St.3d 88, 90-91, 647 N.E.2d 784 (1995).

{¶4} Accordingly, because Mr. Horsley's application for delayed reopening is untimely and also barred by the doctrine of res judicata as a successive application, his application for delayed reopening is denied.

{¶5} The clerk is **ORDERED** to serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail. **IT IS SO ORDERED.**

Smith, P.J., & Abele, J.: Concur.

FOR THE COURT



Michael D. Hess
Administrative Judge

CA16
Pg 748

The Supreme Court of Ohio

State of Ohio

v.

David K. Horsley

Case No. 2024-0043

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Pickaway County Court of Appeals; No. 99CA33)

Sharon L. Kennedy
Chief Justice

APP B

The Supreme Court of Ohio

State of Ohio	Case No. 2024-0043
v.	RECONSIDERATION ENTRY
David K. Horsley	Pickaway County

It is ordered by the court that the motion for reconsideration in this case is denied.

(Pickaway County Court of Appeals; No. 99CA33)

Sharon L. Kennedy
Chief Justice

App C

IN THE FORTH DISTRICT COURT OF APPEALS
PICKAWAY COUNTY, OHIO

State of Ohio,	:	Case No. 99CA33
Respondent,	:	C.P. 98CR184 Pickaway
v.	:	
David K. Horsley,	:	DELAYED APPLICATION TO REOPEN
Petitioner,	:	#2

I. CASE HISTORY

TRIAL

Judge P. Randell Knece Withdrawal of Plea counsel: O.P.D. Attorney William Archer

M1 Assault enhanced to an F4. O.R.C. 2903.13 (C)(5).

Failure to Appear dismissed in return for guilty plea.

Date Sentenced Nov 24, 1999, Disposition FOUND GUILTY

Trial Counsel: O.P.D. Attorney William Archer

WITHDRAWAL OF PLEA HEARING

Judge P. Randell Knece Withdrawal of Plea counsel: O.P.D. Attorney Tracey Leonard

Testimony given by Ptl Baer, Attorney W. Archer and the petitioner.

Date of hearing Oct 6, 1999, Disposition DENIED

APPEAL

Notice of Appeal Nov 15, 1999, Filed by Attorney T. Leonard

Praecipe of Transcript of the Record Nov 15, 1999, Filed by Attorney T. Leonard

App D

*Attorney T. Leonard failed to certify a copy of the Praecipe to the Court Reporter. As a result a complete copy of the transcript of the record was never created or transmitted to the appellate court and therefore, never been reviewed by the appellate court. The transcript of the withdrawal of plea hearing whose result I am appealing has never been reviewed by appellate counsel or the appellate court on my behalf. (App G, H and I)

Stay of Execution of Sentence: Attorney T. Leonard never filed one with Appellate court.

Entry/ Motion to Withdrawal an Appeal Nov 24, 1999, Judge Abele

Entry accept Motion to Withdrawal Appeal Dec 09, 1999, Judge Abele

Appellate counsel: O.P.D. Attorney Jerry McHenry

Motion for reconsideration of his appeal May 28, 2021

Motion denied with review, Jun 02, 2021 Judge Smith

The Ohio Supreme Court denied without review 2021-Ohio-0750.

The United States Supreme Court denied without review Jan 10, 1999, # 21-5961

Application to reopen appeal May 21, 2022

Application denied without review, Jun 02, 2022 Judge Smith

Magistrates order without review Jun 27, 2022 Magistrate T. Ruth

Motion to reconsider his application to reopen, Jun 08, 2022

Motion denied with review, Jul 12, 2022 Judge Hess

The Ohio Supreme Court denied without review 2022-Ohio-0885.

Delayed application to reopen App. R. (B) Jan 17, 2023

Application denied without review, Feb 08, 2023 Judge Hess

The Ohio Supreme Court denied without review. 2023-Ohio-0224

Writs of Mandamus and Prohibition May 05, 2023, 2023-0591

Cause dismissed without review. Aug 08, 2023, 2023-2600

I. STATEMENT OF THE FACTS

I signed a plea agreement.(App A) I then moved to withdrawal that plea and on Oct 6, 1999, a hearing was held in which my request was denied without reason.(App B) I requested an appeal after that hearing. Six (6) weeks later I signed a Motion to Withdrawal my Appeal because I was told there were no merits to my appeal by Withdrawal of Plea Counsel.(App C) Then unknown to anyone Withdrawal of Plea counsel the failed to properly certify a copy of Praecipe of the Transcript of the Record to the Court Reporter which resulted in a transcript of the Withdrawal of Plea Hearing never being created to be reviewed. I learned this from a public records request from the Court Reporter. (App G, H and I) Appellate counsel never reviewed the transcript of the withdrawal of plea hearing or listed any legal merit to my case in an *Anders* brief. (App C) The appellate court also did not review the transcript of the withdrawal of plea hearing when he accepted the motion to withdrawal. (App D) I then filed a Motion to Reconsider my Appeal. The appellate court also failed to review a copy of the transcript of the withdrawal of plea hearing and denied my request. (App E) The Magistrate issued orders to me to properly certify without review. (App K) The appellate court denied my Motion to Reconsider based on a failure to properly certify my paperwork but missed withdrawal of plea counsels' failure to properly certify the Praecipe of the Transcript of the Record. (App F) I appealed to the Ohio Supreme Court which denied review. I then filed a Delayed application to reopen which the appellate court again denied without appellate review. On page 2 of that ruling he claimed that trial counsel properly filed the Praecipe of the Transcript of the Record which is false. (App J) I appealed to the Ohio Supreme Court and was again denied review. I also filed writs of Mandamus and Prohibition which were denied review.

II. TIME

This is a case where the appellant signed a motion to withdrawal an appeal without being properly advised to the merits of his case by appellant counsel on an appeal of right due to withdrawal of plea counsel's deficient performance.

The right to appeal a state criminal conviction is not specifically provided for in the Federal Constitution. *Estelle v. Dorrough*, 420 U.S. 534, 536, 95 S.Ct. 1173, 43 L.Ed.2d 377 (1975). However, where a state provides a process of appellate review, the procedures used must comply with the constitutional dictates of due process and equal protection. *Griffin v. Illinois*, 351 U.S. 12, 18, 76 S.Ct. 585, 100 L.Ed. 891 (1956). When a state opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause. *Evitts v. Lucey*, 469 U.S. 387, 393, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985).

As this case involves a Motion to Withdrawal an Appeal, App C, and the standards set forth in *Anders v. California*, 386 U.S. 738, (1967), and *Penson v. Ohio*, 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300, apply to this case. Those standards have not been followed on direct appeal as withdrawal of plea counsel failed to properly certify a Praecipe of the Transcript of the Record thus denying appellant counsel and the appellate court from reviewing the transcript of the withdrawal of plea hearing. This is particularly egregious as I have denied counsels advice altogether as to the testimony given at the withdrawal of plea hearing. This proves I have not been represented by counsel at all on appeal to the testimony given at the withdrawal of plea hearing whose result it is that I am appealing. "In a situation like that here, counsel's failure was particularly egregious in that it essentially waived respondent's opportunity to make a case on the merits; in this sense, it is difficult to distinguish respondent's situation from that of someone who had no counsel at all. Cf. Anders v. California, 386 U.S. 738 (1967); Entsminger v. Iowa, 386

U.S. 748 (1967)." *Evitts v. Lucey*, 469 U.S. 387, 395 n.6 (1985), and goes on to show that my appeal was not properly adjudicated if I am denied the effective assistance of counsel on appeal. "A first appeal as of right therefore is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney." *Evitts 469@* 396. My appeal has not been properly adjudicated and is Good Cause.

And the appellate court judge missed counsels failure to certify in his Entry accepting my Motion to Withdrawal (App D), the appellate court judge missed it in his denial of my Application to Reopen (App E) and another appellate court judge denied my application for failure to certify. (App F) On page 2 of the appellate courts denial of my Delayed Application to reopen, (App J), the judge stated that the Praecipe of the Transcript of the Record was done properly. That is not what the Court Reporter said. (App I) How can you hold me to a standard of review you cannot meet yourselves? This proves Good Cause to exceed the time limit.

I have shown Good Cause to exceed the time limits in App. R. 26(B)(1) and my arguments are Grounds for Relief as I have effectively had no attorney review the testimony given at the withdrawal of plea hearing. This injury is particularly egregious as a hearing was held and the trial courts denial of my request to withdrawal my plea is what I am appealing. (App B)

III. *RES JUDICATA*

Res Judicata bars all future attempts at a legal argument but there is an exception. Does that exception apply? Yes, it does. That exception applies when if the application to reopen is not considered timely but has shown good cause, "A substantive review of the claim is an essential part of a timely filed App. R.26(B) application." *State v. Davis*, 2008-Ohio-4608, 26. App. R. 26(B)(1), states, "...unless the applicant shows good cause for filing at a later time." In this case the Good Cause is that I have been denied my 6th Amendment right to the effective assistance of

counsel on direct appeal. The 6th Amendment Right to the effective assistance of counsel is guaranteed by the constitution and appellate counsel has failed in its obligation to perform effectively as the failure to follow the standards in *Anders v. California*, 386 U.S. 738, (1967), and *Penson v. Ohio*, 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300 proves. Withdrawal of Plea Counsel failed to properly certify a Praecipe of the Transcript of the Record, App's G, H and I, which proves deficient performance of counsel on direct appeal. It proves a substantive review of my case has never occurred on direct appeal or the subsequent application to reopen filings. The appellate court is required to correct any errors on direct appeal. *Lafler v Cooper*, 566 U.S. ___, 11, (2012). App. R. 26(B)(5) states, "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." I have shown that if not for Withdrawal of Plea Counsel's failure to properly certify a Praecipe of the Transcript of the Record a substantive review of the case for merits would have occurred on direct appeal and would have resulted in my plea being withdrawn.

The appellate court must consider my application as showing Good Cause as I have been denied my 6th Amendment right to counsel on appeal as counsel has never reviewed the transcript of the withdrawal of plea hearing whose result it is that I am appealing. A substantive review of the transcript of the withdrawal of plea hearing has not been performed on direct appeal or in any post-conviction filing due to counsel's deficient performance.

IV. GROUNDS FOR RELIEF

1. **Withdrawal of plea counsel failed to properly certify a copy of the Transcript of the Record to the Court Reporter resulting in me being denied my 6th Amendment right to the Effective Assistance of Counsel on Direct Appeal.**

The right to appeal a state criminal conviction is not specifically provided for in the Federal Constitution. *Estelle v. Dorrough*, 420 U.S. 534, 536, 95 S.Ct. 1173, 43 L.Ed.2d 377 (1975). However, where a state provides a process of appellate review, the procedures used must comply with the constitutional dictates of due process and equal protection. *Griffin v. Illinois*, 351 U.S. 12, 18, 76 S.Ct. 585, 100 L.Ed. 891 (1956). When a state opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause. *Evitts v. Lucey*, 469 U.S. 387, 393, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985).

As this case involves a Motion to Withdrawal an Appeal the standards set forth in *Anders v. California*, 386 U.S. 738, (1967), and *Penson v. Ohio*, 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300, apply to this case. Appellate Counsel failed to review a copy of the transcript of the withdrawal of plea hearing, whose result it is that I am appealing, and advise me of those merits before I signed a motion to withdrawal my appeal in violation of the standards set forth in *Anders* and *Penson*. This is due to Attorney Leonard's failure to properly file a Praecipe of the Transcript of the Record as shown in a response to a public records request from the Court Reporter. (App G) That proves I did not make a knowing and intelligent decision to sign the Motion to Withdrawal the Appeal as appellate counsel has never reviewed my case for merits to be able to advise me of them. As a review of the transcript is required the injury must be repaired by assigning counsel to represent me on appeal. This injury must be corrected as" Sixth Amendment remedies should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests." *United States v. Morrison*, 449 U. S. 361, 364 (1981). *Lafler v Cooper*, 566 U.S. ___, 11, (2012) (internal quotation marks deleted) The failure to properly certify the Praecipe of the Transcript of the record has resulted in me

being denied the effective assistance of counsel on direct appeal as appellant counsel has never reviewed the transcript of the withdrawal of plea hearing whose result I am appealing, has never occurred. The failure to create the Transcript of the Withdrawal of plea hearing has prohibited me from arguing any legal merits to my case on Direct Appeal. It is as though I had no attorney at all on appeal.

> "In a situation like that here, counsel's failure was particularly egregious in that it essentially waived respondent's opportunity to make a case on the merits; in this sense, it is difficult to distinguish respondent's situation from that of someone who had no counsel at all. Cf. Anders v. California, 386 U.S. 738 (1967); Entsminger v. Iowa, 386 U.S. 748 (1967)." *Evitts v. Lucey*, 469 U.S. 387, 395 n.6 (1985),

And goes on to show that my appeal was not properly adjudicated if I am denied the effective assistance of counsel on appeal and the lack of representation on appeal is unfair.

> "A first appeal as of right therefore is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney." *Evitts v. Lucey*, 469 U.S. 387, 396-97 (1985).

I have shown that I have been denied my 6th Amendment right to the effective assistance of counsel on direct appeal and request an attorney be assigned to handle my appeal.

2. **Withdrawal of plea counsel failed to properly ask significant and obvious questions related to the second prong of *Strickland v. Washington*, 466 U.S. 668, 687 in the charge of Failure to Appear.**

At withdrawal of plea hearing the defense attorney must prove the two prongs of Strickland v. Washington, 466 U.SS. 668, 687 to overturn the plea agreement. Withdrawal of plea counsel T. Leonard asked about the first prong which is trial counsel William Archer being hired by the same prosecutors office that was prosecuting my court case but failed to ask any questions

related to the second prong of Strickland on those two charges. Attorney William Archer testified about being hired by the prosecutor's office and was hired on August 1, 1999, just months after having me sign a guilty plea. (App A) My trial counsel William Archer had a conflict of interest in being the top applicant for a job with the Pickaway County Prosecutors Office that prosecuted the Assault charge and Failure to Appear charges and as a result prejudice is presumed.

> "Prejudice is presumed only if the defendant demonstrates that counsel "actively represented conflicting interests" and that "an actual conflict of interest adversely affected his lawyer's performance." Cuyler v. Sullivan, supra, at 350, 348 (footnote omitted)." *Strickland v. Washington*, 466 U.S. 668, 692.

In this case, there is a conflict of interest as Attorney Archer testified as a witness in the Failure to Appear charge and is also the party responsible for my being late for court. I claim I visited his office and told him I was going to be at court the next day at 1 p.m. and I wanted to be sure of the time plus I wanted to know what he was going to do at trial the next day. He let me leave thinking the time I was to be in court was 1 p.m. A significant and obvious failure to protect my interests at trial. If not for his deficient performance in failing to tell me the proper time to be in court I would have appeared on time and the Assault charge would have been dismissed or a jury would have found me not guilty of the charge.

He admits to me being at his office the day before trial but states he does not recall what was said. My trial counsel was seeking a position with the Pickaway County Prosecutor's Office at that time. He testified that he was hired on Aug 1, 1999, while still assigned to my court case. This proves he was first in line to get the job as assistant prosecutor while he was representing me as trial counsel and we can assume he could have potentially lost that job opportunity had he admitted to being the reason I was late for court. To cover up his own failure he had me sign a

guilty plea. This proves a significant and obvious conflict of interest. This proves that trial counsel "an actual conflict of interest adversely affected his lawyer's performance." *Strickland* 466 @ 692. The circumstantial evidence shows that I had no intention to be late for court and he does not recall what was said. My version of events is not disputed. A jury would not convict.

Withdrawal of Plea Attorney T. Leonard did not ask trial counsel Attorney W. Archer why he did not remove himself from the case once I told him I blamed him for my being late for court? She did not ask him what his legal strategy was going to be if I refused to pled guilty to the failure to appear charge. She did not ask him how he was going to represent me at trial on the charge of failure to appear and testify as a witness to that charge at the same time? Asking questions about the trial counsel's strategy on each of the two charges contained in the plea agreement are significant and obvious questions to be asking if the attorney is to prove deficient performance of counsel as required by *Strickland v. Washington*, 466 U.SS. 668, 687.

The totality of the evidence proves if it was not for counsels deficient performance, *supra* p.6-8, there is a *reasonable probability* that I would have overturned on appeal the trial court's decision denying my request to withdrawal my plea. *Strickland* 466 @ 694. I respectfully request an attorney be assigned to my appeal.

3. Withdrawal of plea counsel failed to properly to ask significant and obvious questions related to the second prong of *Strickland v. Washington*, 466 U.SS. 668, 687 in the charge of M1 Assault, Enhanced to an F4. O.R.C. 2935.03 (C)(5).

At withdrawal of plea hearing the defense attorney must prove the two prongs of *Strickland v. Washington*, 466 U.SS. 668, 687 to overturn the plea agreement. Withdrawal of plea counsel T. Leonard asked about the first prong which is trial counsel William Archer being hired by the

same prosecutors office that was prosecuting my court case but failed to ask any questions related to the second prong of *Strickland* on those two charges.

If you only believe Ptl Baer's version of events then let us look at his testimony. That night I was in handcuffs and placed into the back of a patrol car. Ptl Baer stated that I was suffering a medical emergency while laying face down in the floorboards of a patrol car and when he opened the door he was kicked. He had no injuries or damage to clothing.

Does Ptl Baer's testimony describe a crime being committed? It was dark as it was 11 p.m. at night. I am 5'10" tall. If I were laying face down in the floorboards of a police car, with my hands in handcuffs behind my back, then in that position I would not be able to see a cop walk up to the car or know that he was going to open the door and especially with the motor running while struggling to breathe. In the position that Ptl Baer describes, my feet would be on the door and would naturally fall when the door was opened potentially making contact with him. A person suffering a medical emergency would be concentrating on breathing and trying to right themselves in the back seat of the car in an attempt to get their head out of the floorboard and could only do so if they straightened their legs out to try and sit up. That would force their legs outside of the car, presumably, where the officer was standing. All while still being unable to see a police officer behind them as their head is in the floorboard. That would mean that any contact that was alleged to have occurred was not intended to cause harm.

If you only believe Ptl Baer then he may have felt it was intentional but being the victim may have biased in his decision to charge me with Assault as his testimony of the events of that night do not show a clear intent to cause harm. This is a legally arguable merit to raise on appeal that I was not advised of by appellate counsel before I signed a Motion to Withdrawal the Appeal due to withdrawal of plea counsel's deficient performance.

Can triers of fact speculate to a person's conduct?

> "In our republic, a speculative possibility that a man's conduct violated the law should never be enough to justify taking his liberty." U.S. V Davis, 588 U. S. ____ (2019).

The only physical evidence in the assault charge is that Ptl Baer testified that I had a bruise on the side of my head which is consistent with my version of events. The investigator, if there was one, never collected the 2 in car videos. The 2nd patrolman did not write a statement about the alleged assault but instead included a sworn statement allegedly made by my ex -gf. (App M) It lists 2 items but the wording suggests it was written by a police officer rather than Angie herself. Item 1 says, "Held her down" instead of "held ME down" and item 2 it says, "hit her" instead of "hit ME". Items 1 and 2 are the officers' words, not Angie's. There is a different date at the top of the page than at the bottom with her signature. It would suggest items 1 and 2 were added the day after she signed the form. Her injury was not consistent with being punched in the face and it is not what she said to A.P.A. J. Wolford in front of me. I want to see the picture of her injury. I plead to a charge of disorderly conduct because I wanted to keep my job.

If it was not for counsels deficient performance there is a *reasonable probability* that I would have overturned on appeal the trial court's decision denying my request to withdrawal my plea.

CONCLUSION

For the reasons stated above, I respectfully request the appellate court grant my delayed application to reopen in accordance with App. R. 26 (B)(5) and (6).

David K. Horsley, *Pro Se*
500 Engle Dr. Apt 537
McArthur, Oh 45651
(740) 357-8041
Horsley151@hotmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Appellants' brief was mailed by certified letter or regular mail to David Landefeld, 1767 Northwood Dr NE Lancaster, OH 43130 and Alan Sedlack, P.O. Box 910, 118 E. Main Street, Circleville, Ohio 43113 on this 11 day of October 2023.

David K. Horsley, *Pro Se*

SWORN STATEMENT

I, David K. Horsley, hereby affirm and certify that I am competent to give the following declarations based on my personal knowledge, unless otherwise stated, and that the facts and procedural history in the attached Delayed Application to Reopen filed September 3, 2023, are true to the best of my personal knowledge.

David K. Horsley, *Pro Se*

Sworn to and subscribed in my presence this 3 day of October 2023.

NOTARY PUBLIC

My commission expires: 6-15-2028

here

IN THE C RT OF COMMON PLEAS, PICKAWA OUNTY, OHIO

App A

State of Ohio

FILED-COMM. PLEAS Case No. 98-CR-184

Plaintiff,

Vs.

99 APR 29 PM 2:08

PETITION TO ENTER PLEA OF GUILTY

SHARON K. CLINE
CLERK OF COURTS
PICKAWAY COUNTY

David Horsley
Defendant

THE DEFENDANT represents to the Court:

(1) My full name is David K. Horsley, and I request that all proceedings against me be had in that name; and I am mentally competent to make this Petition. I understand should the plea of guilty herein tendered not be accepted and a trial follows, that admissions made herein would not be admissible against me at said trial. I (AM) AM NOT A **CITIZEN OF THE UNITED STATES.**

(2) I am represented by an attorney William L. Archer, Jr.

(3) I withdraw my former not guilty plea and enter a plea of guilty to the following offense(s):

Count or Specificiation	Offense/Specification	ORC Section	Level
	Assault on a Police Officer	2903.13	F-4

(4) I told my lawyer all of the facts and circumstances known to me about the charges asserted in the Information/Indictment. I believe that my lawyer is fully informed on all such matters. My lawyer has counseled and advised with me on the nature of each charge and on all possible defenses that I might have in this case.

(5) I understand that I may plead "not Guilty" to any offense charges against me. If I choose to plead "Not Guilty" the Constitution guarantees me (a) the right to speedy and public trial by jury, (b) the right to see and hear all witnesses called to testify against me, (c) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor, and (d) the right to have the assistance of a lawyer at all stages of proceedings, (e) I also understand that if I do not have funds, and cannot obtain funds to employ an attorney, the Court will appoint an attorney to represent me; and (f) that I do not have to testify against myself.

(6) I also understand that if I plead "Guilty" to the charges against me, the Court may impose the same punishment as if I had plead "Not Guilty", stood trial and had been convicted by a jury.

(7) **MAXIMUM PENALTY**. I understand that the maximum penalty as to each count is as follows:

Offense/ Specification	Maximum Stated Prison term (Yrs/Mos)	Maximum Fine	Mandatory Fine	License Suspension	Prison Term is Mandatory/ Consecutive	Prison Term is Presumed Necessary
	18 months	$5,000	—	—	—	No

Prison terms for multiple charges, even if consecutive sentences are not mandatory, may be imposed consecutively by the Court.

Court costs, restitution and other financial sanctions including fines, day fines, and reimbursement for the cost of any sanctions may also be imposed.

I understand that if I am now on felony probation, parole, under a community control sanction, or under post release control from prison, this plea may result in revocation proceedings and any new sentence could be imposed consecutively. I know any prison term stated will be served without good time credit.

BAD TIME: In addition, possible "Bad Time" is part of the maximum possible penalty. Therefore, additional prison time may be added to the stated prison term by the Parole Board for any rule violation I commit while in prison that is a crime under Ohio or United States laws. This time can be added administratively under Revised Code Section 2967.11 and may be for 15, 30, 60 or 90 day periods for each violation while I am in prison, up to 1/2 of my total stated prison term. I understand that

POST RELEASE CONTROL: In ition, a period of supervision by the A Parole Authority after release from prison is (mandatory/optional) in this case. If I am sentenced to prison for a felony 1 or felony sex offense, after my prison release I will have 5 years of post release control under conditions determined by the Parole Board. If I am sentenced to prison for a felony 2 or a felony 3 which involved causing or threatening physical harm, I will have mandatory post release control of 3 years. If I receive prison for a felony 3, 4 or 5, I may be given up to 3 years of post release control. A violation of any post release control rule or condition can result in a more restrictive sanction while I am under post release control, and increased duration of supervision or control, up to the maximum term and reimprisonment even though I have served the entire stated prison term imposed upon me by this Court for all offenses. If I violate conditions of supervision while under post release control, the Parole Board could return me to prison for up to nine months for each violation, for a total of 1/2 of my originally stated prison term. If the violation is a new felony, I could receive a prison term of the greater of one year of the time remaining on post release control, in addition to any other prison term imposed for the offense.

COMMUNITY CONTROL: If this Court is not required by law to impose a prison sanction, it may impose community control sanctions or non-prison sanctions upon me. I understand that if I violate the terms or conditions of a community control sanction, the Court may extend the time for which I am subject to this sanction up to a maximum of 5 years, impose a more restrictive sanction, or imprison me for up to the maximum stated term allowed for the (offense/offenses) as set out above.

(8) I understand the nature of these charges and the possible defense I might have. I am satisfied with my attorney's advice and competence. I am not under the influence of drugs or alcohol. No threats have been made to me. No promises have been made except as part of this plea agreement stated entirely as follows:

State agrees not to file failure to appear charge and will recommend a PSI

(9) By pleading guilty I admit committing the offense and will tell the Court the facts and circumstances of my guilt. I know the judge may either sentence me today or refer my case for a presentence report. I understand my right to appeal a maximum sentence, my other limited appellate rights and that any appeal must be filed within 30 days of my sentence. I understand the consequences of a conviction upon me if I am not a U.S. citizen.

(10) I plead **"Guilty"** and respectfully request the Court to accept my plea of **"Guilty"** and to have the Clerk enter my plea of **"Guilty"** on the basis of the following facts:

as alleged in the indictment

(11) I offer my plea of "Guilty" freely and voluntarily and of my own accord and with full understanding of all the matters set forth in the Information/Indictment and in this Petition, and this plea is with the counsel and consent of my attorney.

(12) I further state that I wish to waive the 24 hour service of the Information/Indictment, and I request the Court to enter my plea of "Guilty" as set forth in paragraph ten (10) of this Petition.

(13) I have the right to appeal this conviction by filing Notice of Appeal within 30 days of the date of sentencing. If without sufficient funds, I have the right to a transcript and lawyer without cost to me.

Signed by me in the presence of my attorney this 29th day of April, 1999.

Defendant

Attorney for Defendant

WAIVER OF JURY TRIAL AND ACKNOWLEDGEMENT OF RIGHTS

I, the defendant in the above case, being now in open court, hereby voluntarily waive and relinquish my right to trial by jury. Further, I acknowledge that all explanations required by Ohio Rule of Criminal Procedure 11(c) have been explained to me and that I fully understand that a plea of guilty gives up those rights.

Defendant

Attorney for Defendant

FINDING OF GUILTY PLEA

The Court hereby determines that the defendant understands all of his/her rights specified in Rule 11(c), Rules of Criminal Procedure and that he/she has been advised of all of his/her constitutional rights and that he/she stated in open Court that he/she understood and waived all these rights before entering his/her plea of guilty to the crime with which he/she stands charged.

The above plea of "Guilty" is accepted and ordered filed, and the Court hereby finds the Defendant guilty.

Judge P. Randall Knece
Pickaway County Common Pleas Court

IN THE C_ JRT OF COMMON PLEAS OF P_ _AWAY COUNTY, OHIO

THE STATE OF OHIO,

vs.

99 OCT 14 AM 11:12

SHARON K. CLINE
CLERK OF COURTS
PICKAWAY COUNTY

CASE NO. 98-CR-184
JUDGE P. RANDALL KNECE

DAVID K. HORSLEY,

Defendant.

ENTRY

On October 6, 1999, David L. Landefeld, Special Prosecuting Attorney for Pickaway County, Ohio, appeared on behalf of the State of Ohio, and the Defendant, David K. Horsley, appeared with his counsel, Tracey Leonard.

On August 25, 1999, the Defendant filed a motion to withdraw his plea, pursuant to Ohio Criminal Rule 32.1.

On September 10, 1999, a motion and entry were filed by the Pickaway County Prosecuting Attorney's Office requesting the appointment of Fairfield County Prosecutor David L. Landefeld, to serve as a Special Prosecutor to assist the Pickaway County Prosecutor's Office in this matter. The Court found the motion to be well taken, and ordered the appointment of David L. Landefeld.

On the date first mentioned, a hearing was held on the Defendant's motion. The Court, after hearing the evidence presented, found the Defendant's motion to be not well taken. It is, therefore, the **ORDER** of this Court that the Defendant's motion is hereby overruled.

P. Randall Knece

JUDGE P. RANDALL KNECE

10-14-99

91280 Pg369

APPROVED BY:

David L. Landefeld
Special Prosecuting Attorney
for Pickaway County, Ohio
Registration No. 0000627

OFFICE OF THE PROSECUTING ATTORNEY
FAIRFIELD COUNTY, OHIO

CRIMINAL, JUVENILE, and CIVIL DIVISIONS
323 East Main Street
Lancaster, Ohio 43130
(740) 653-4259
FAX (740) 653-4708

App B

IN THE FOURTH DISTRICT COURT OF APPEALS, PICKAWAY COUNTY, OHIO

State of Ohio,	:	
Plaintiff,	:	No. 99-CA-000033
vs.	:	
David K. Horsley,	:	AGREED ENTRY
Defendant.	:	

By agreement of the parties the Notice of Appeal filed in the above-mentioned case is hereby voluntarily WITHDRAWN without prejudice.

JERRY MCHENRY, ATTORNEY AT LAW

DAVID K. HORSLEY, DEFENDANT

DAVID LANDEFIELD, SPECIAL PROSECUTOR

App C

IN THE COURT OF APPEALS
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

STATE OF OHIO,

Plaintiff-Appellee

vs.

DAVID K. HORSLEY,

Defendant-Appellant.

Case No. 99 CA 33

ENTRY

Upon notice of agreement by the parties for dismissal, this appeal is hereby dismissed. Costs to the appellant.

For the Court,

Peter B. Abele
Administrative Judge

Jr 9 Pg 248

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

State of Ohio,

Plaintiff-Appellee,

v.

David K. Horsley,

Defendant-Appellant.

Case No. 99CA33

ENTRY DENYING APPLICATION TO REOPEN

{¶1} Appellant, David K. Horsley, filed his second application to reopen his appeal pursuant to App.R. 26(B). Mr. Horsley previously filed a similar motion which was denied on June 2, 2021. In support of his motion, Mr. Horsley alleges he did not have adequate advice from his counsel on appeal because no transcript of the proceedings which resulted in the trial court's decision that denied his motion to withdraw his plea was ever created. Because Mr. Horsley did not comply with the procedure set forth in App.R. 26(B)(1)-(4), his application for reopening is denied.

I. STANDARD OF REVIEW

{¶2} "App.R. 26(B) establishes a two-stage procedure to adjudicate claims of ineffective assistance of appellate counsel." *State v. Leyh*, ___ Ohio St.3d ___, 2022-Ohio-292, ___N.E.3d___, ¶ 19. "At that first stage, the applicant must apply to have his appeal reopened following the procedure set out in App.R. 26(B)(1) through (4)." *Id.* at ¶ 20. "The 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).

> If the court of appeals grants the application, then the matter 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).

II. LEGAL ANALYSIS

{¶3} Under App.R. 26(B)(2)(b) the application must contain "[a] showing of good cause for untimely filing if the application is filed more than ninety days after journalization of the appellate judgment." Mr. Horsely has filed his application to reopen his appeal more than 22 years past the time provided in App.R. 26(B)(1). Mr. Horsley did not address the reason for his delayed application. Therefore, we must deny his application because it was not timely filed and he did not provide a showing of good cause for his untimely filing.

{¶4} Even if Mr. Horsley had filed his application timely, he failed to include a sworn statement in his application. Under App.R. 26(B)(2)(d), the application must contain

> [a] sworn statement of the basis for the claim that appellate counsel's representation was deficient with respect to the assignments of error or arguments raised pursuant to division (B)(2)(c) of this rule and the manner in which the deficiency prejudicially affected the outcome of the appeal, which may include citations to applicable authorities and references to the record.

Because Mr. Horsley's application is devoid of any sworn statement we must deny his application.

{¶5} Because Mr. Horsley failed to comply with the procedure set forth in App..R. 26(B)(1) – (4), we must deny his application. However, even if his application was not procedurally deficient, Mr. Horsley has failed to demonstrate a genuine issue as to whether there is a colorable claim of ineffective appellate counsel pursuant to App.R. 26(B)(5). As prescribed in *Leyh*, if the applicant demonstrates a "genuine issue" as to whether there is a "colorable claim" of ineffective appellate counsel, then the application for reopening shall be granted and the applicant proceeds to stage two. *Leyh* at ¶ 21 - 22. During this first stage, the appellate court undertakes "a substantive review of the claim" as "an essential part of a timely filed App.R. 26(B) application." *Id.* at ¶ 21. Under the process outlined in *Leyh*, if the sworn statement required by App.R. 26(B)(2)(d) "sufficiently set[s] forth 'the manner in which the deficiency prejudicially affected the outcome of the appeal,' " *Leyh* at ¶ 28, quoting App.R. 26(B)(2)(d), then the applicant has "presented a genuine issue as to whether" the applicant has a colorable claim of ineffective assistance of appellate counsel under *Strickland*. *Leyh* at ¶ 30.

{¶6} On November 15, 1999 trial counsel for Mr. Horsley filed a notice of appeal from the entry which denied his motion to withdraw his guilty plea filed on October 14, 1999. The notice of appeal included a motion for the preparation of complete transcript of proceedings at state expense, an affidavit of indigency, a statement, praecipe, and notice to court reporter, and a docketing statement. Then, just nine days later, an agreed entry of withdrawal of notice of appeal was filed, which contained Mr. Horsley's signature, the signature of his counsel, and the prosecutor's

signature. As a result, this Court filed an entry dismissing the appeal on December 8, 1999.

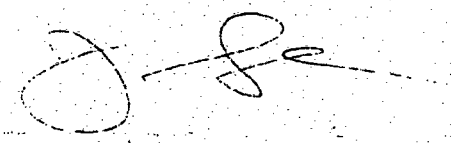
{¶7} In his application to reopen the dismissed appeal, Mr. Horsley alleges his attorneys' performance was deficient because they failed to obtain and review a copy of the transcript of the proceedings involving his motion to withdraw his plea. Mr. Horsley claims that this deficiency prejudiced him by not allowing him to make an informed decision of whether he should waive his appeal or not. However, Mr. Horsley fails to explain why he agreed to withdraw his appeal just nine days after filing it. Nine days is hardly enough time to prepare a transcript, let alone review and discuss it. Yet, Mr. Horsley signed an agreed entry to withdraw his appeal without allowing time for the transcript to be prepared, reviewed, and discussed. If anything, Mr. Horsley's own action of withdrawing his appeal prior to reviewing the transcript prejudiced him, not his attorneys' actions.

{¶8} We conclude Mr. Horsley's appellate counsel did file a notice of appeal and requested a complete transcript be prepared. It was Mr. Horsley's decision to withdraw his appeal just nine days after filing that resulted in the outcome of his appeal being dismissed. Consequently, appellant has failed to establish any genuine issue as to whether he was deprived of the effective assistance of counsel on appeal and we must deny Mr. Horsley's application for reopening. **APPLICATION DENIED.**

{¶9} The clerk is **ORDERED** to serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail. **IT IS SO ORDERED.**

Abele, .J., & Wilkin, J.: Concur.

FOR THE COURT



Jason P. Smith
Presiding Judge

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

State of Ohio,

Plaintiff-Appellee,

v.

David K. Horsley,

Defendant-Appellant.

Case No. 99CA33

ENTRY DENYING APPLICATION TO RECONSIDER

Appellant, David K. Horsley, has filed a motion to reconsider his application to reopen, which we denied on June 2, 2022; however, the certificate of service did not comply with App.R. 13(B) and Loc.R. 2. The appellant did not sign or date his certificate of service, nor did he state specifically the name and address of each attorney and party served. In fact, the certificate of service was directed to "Ohio's 4th District Court of Appeals," which is not a party to the case.

Pursuant to App.R. 13(B), "[c]opies of all documents filed by any party and not required by these rules to be served by the clerk shall, on or before the day of filing, be served by a party or person acting for the party on all other parties to the appeal." Loc.R. 2 provides, "the certification of service shall state specifically the name and address of each attorney and party served. A certification alone that all counsel and parties of record were served without giving their names and addresses will be deemed not in compliance with this rule."

Appellant was given 10 days to serve a copy of the motion on the party or parties to this case and file proof of service with this Court. Appellant filed a response which indicated he served "David Littlefield" of "Lancaster, Ohio." David Littlefield is not a party

to this case. The certificate of service did not list the date the motion was served. Therefore the appellant has not filed a proper proof of service and pursuant to App.R. 13, the Court cannot consider filings without proof of service.

Appellant argues that "the duty to serve falls upon the appellate court and is why Ohio App.R. 26(B)(3) is the overriding appellate rule." Contrary to his assertion, App.R. 26(B)(3) pertains only to *applications to reopen*. Indeed, that rule does require the clerk to serve the application. Here, appellant has filed a *motion to reconsider*, which we treat as an *application to reconsider* pursuant to App.R. 26(A)(1). Pursuant to that rule, "[c]opies of the application, answer brief in opposition, and reply brief *shall be served in the manner prescribed for the service and filing of briefs in the initial action*." (Emphasis added.) App.R. 18, governs the filing of briefs and provides that the responsibility to serve belongs to the appellant and appellee, not the clerk.

Because appellant's filing did not contain a proper proof of service, we **STRIKE** his motion to reconsider his application to reopen.

The clerk shall serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail. **IT IS SO ORDERED.**

Smith, P.J., & Wilkin, J.: Concur.

FOR THE COURT

Michael D. Hess
Administrative Judge

9111 Pg 259

App F

IN THE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

vs.

C.P. Case No. 98-CR-184

99CA33

DAVID K. HORSLEY,

Defendant.

STATEMENT AND PRAECIPE

TO THE APPELLEE:

The Appellant hereby states that he intends to include in the record a complete transcript of the proceedings, including, pre-trial hearings, sentencing hearing, and the hearing on the motion to withdraw the guilty plea.

TO THE COURT REPORTER:

Immediately prepare a complete transcript of proceedings with all exhibits, in the above captioned case, including pre-trial hearings, sentencing hearing, entry of plea, and the hearing on the motion to withdraw the guilty plea, in which a notice of appeal has been filed.

TO THE CLERK:

Immediately prepare and assemble the original papers and exhibits thereto file in the Court and a certified copy of the docket and journal entries. As a complete transcript of proceedings (as above) will be included by the Appellant as part of the record to portray the assignment(s) of error, do not transmit these documents to the clerk of the Court of Appeals of this county for file in common pleas case number 98 CR 184 in that court until the complete transcript of proceedings (as above) has been

delivered to you by the undersigned. At that time, you will transmit the documents prepared and assembled by you and the complete transcript of the proceedings delivered to you by the undersigned to the clerk of the Court of Appeals for file as the record on appeal. In the event that the undersigned does not furnish you with the complete transcript of proceedings within forty days after the filing of the Notice of Appeal, or within any proper extension of the time for transmission of the record, as prescribed by the Appellate Rules of the Local Appellate Rules, then upon such fortieth day or upon the last day of any proper extension of the time for transmission of the record, you shall transmit the documents prepared and assembled by you to the clerk of the Court of Appeals, without such transcript of proceedings, for file as the record on appeal.

Respectfully submitted,

DAVID H. BODIKER - 0016590
Ohio Public Defender

TRACEY LEONARD
Assistant State Public Defender
Atty. Reg. No. 0064013

Office of the Ohio Public Defender
8 East Long Street - 11th Floor
Columbus, Ohio 43215-2998
(614) 466-5394

COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal, Motion for Preparation of Complete Transcript of Proceedings at State Expense, Motion for Leave to Withdraw and Appointment of New Counsel, Affidavit of Indigency, Statement and Praecipe, and Criminal Case Docket Statement was delivered to David L. Landefeld, Fairfield County Prosecutor, 323 Main Street, Lancaster, Ohio 43130-3845 and Alan Sedlack, Assistant Pickaway County Prosecutor, P.O. Box 910, 118 E. Main Street, Circleville, Ohio 43113, this 15 day of November, 1999.

TRACEY LEONARD - #0064013
Assistant State Public Defender

COUNSEL FOR DEFENDANT

#101308

IN THE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

STATE OF OHIO,

Plaintiff, :

99CA 33

vs.

 C.P. Case No. 98-CR-184

DAVID K. HORSLEY,

Defendant.

MOTION FOR PREPARATION OF COMPLETE TRANSCRIPT OF PROCEEDINGS AT STATE EXPENSE

Defendant-Appellant, David K. Horsley, hereby applies to the court for an order directing the official court reporter, at state expense, to prepare and file a **complete** transcript of the proceedings in the above-styled case and to furnish a copy thereof to counsel. The transcript shall include: all plea and pretrial proceedings; all trial proceedings, including voir dire, opening statements, bench conferences, jury instructions, and closing arguments; and all post-trial and sentencing proceedings.

This transcript is necessary to the effective pursuit of Defendant's appeal as of right to the Pickaway County Court of Appeals. Defendant is indigent and lacks the means to pay the cost of preparing such transcript from his own resources. Therefore, he is entitled to a complete transcript of proceedings at State expense. **Griffin v. Illinois** (1956), 351 U.S. 12. Indigent defendants in the State of Ohio are constitutionally entitled to adequate and effective appellate review. **Griffin v. Illinois** (1956), 351 U.S. 12, 19; **Mayer v. Chicago** (1971), 404 U.S. 189, 194. This review is "impossible without a trial transcript or adequate substitute." **Bounds v. Smith** (1977),

430 U.S. 817, 822. Thus, "there can be no doubt that the state must provide an indigent defendant with a transcript of prior proceedings when that transcript is needed for an effective defense or appeal." **Britt v. North Carolina** (1971), 404 U.S. 226, 227. Accord, **State v. Arrington** (1975), 42 Ohio St.2d 114, at Paragraph One of the Syllabus. In addition, the Ohio Supreme Court has determined that Section 16, Article I of the Ohio Constitution ensures a criminal defendant-appellant the availability of an unabridged transcript of proceedings. **State ex rel. Spirko v. Court of Appeals** (1986), 27 Ohio St.3d 13, 17.

As an indigent, Defendant-Appellant is without means and is unable to pay the cost of preparing a transcript from his own resources. For these reasons Defendant-Appellant is entitled to the preparation of a complete transcript at state expense.

Respectfully submitted,

DAVID H. BODIKER - 0016590
Ohio Public Defender

TRACEY LEONARD
Assistant State Public Defender
Atty. Reg. No. 0064013

Office of the Ohio Public Defender
8 East Long Street - 11th Floor
Columbus, Ohio 43215-2998
(614) 466-5394

COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal, Motion for Preparation of Complete Transcript of Proceedings at State Expense, Motion for Leave to Withdraw and Appointment of New Counsel, Affidavit of Indigency, Statement and Praecipe, and Criminal Case Docket Statement was delivered to David L. Landefeld, Fairfield County Prosecutor, 323 Main Street, Lancaster, Ohio 43130-3845 and Alan Sedlack, Assistant Pickaway County Prosecutor, P.O. Box 910, 118 E. Main Street, Circleville, Ohio 43113, this 15 day of November, 1999.

TRACEY LEONARD - #0064013
Assistant State Public Defender

COUNSEL FOR DEFENDANT

#101308

Reply Reply all Forward

RE: State of Ohio vs. David Horsley - Case Number 98-CR-184

Alice Malott <amalott@pickawaycountyohio.gov>
8/11/2023 10:08 AM

To: Dave Horsley Cc: Alice Malott

Good Morning!

Unfortunately, I do not accept credit cards. If you would like, you can mail a check or money order.

Also, I do have the Court file. Upon a review I do find that a Praecipe was filed on November 15, 1999. However, in the Certificate of Service it states that copies of the Motion for preparation of complete transcript of proceedings was delivered to David Landefeld, Fairfield County Prosecutor and Alan Sedlak, Assistant Pickaway County Prosecutor. The Court Reporter was not included on the Certificate of Service, and I did not receive even a courtesy copy. I also see in the file that the appeal was dismissed by agreement of the parties on December 8, 1999.

Hope this clears the matter up.

Thank you for your patience!

Alice R. Malott, Official Court Reporter
Common Pleas Court
Pickaway County Courthouse
207 South Court Street
Circleville, Ohio 43113
740-474-8376

From: Dave Horsley <horsley151@hotmail.com>
Sent: Friday, August 11, 2023 9:42 AM
To: Alice Malott <amalott@pickawaycountyohio.gov>

COPY

FILED-COURT OF APPEALS

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

2023 FEB -8 AM 10: 13

CLERK OF COURTS
PICKAWAY COUNTY

State of Ohio,

Plaintiff-Appellee,

v.

David K. Horsley,

Defendant-Appellant.

Case No. 99CA33

ENTRY DENYING APPLICATION TO REOPEN

{¶1} Appellant, David K. Horsley, filed his third application to reopen his appeal pursuant to App.R. 26(B). Mr. Horsley previously filed two similar motions which were denied in 2021 and 2022 and an application for reconsideration which was also denied.

{¶2} Under App.R. 26(B)(2)(b) the application to reopen must contain "[a] showing of good cause for untimely filing if the application is filed more than ninety days after journalization of the appellate judgment." Mr. Horsely filed his application to reopen his appeal more than 22 years past the time provided in App.R. 26(B)(1). In support of his motion for delayed reopening, Mr. Horsley claims he "did not have an appeal" and that his "appeal never occurred making [his] appeal, by default, produce a presumptively unreliable result." On the contrary, Mr. Horsley did file an appeal, Pickaway App. No. 99CA33, on November 15, 1999. According to the Pickaway County Clerk of Court's online docket, Mr. Horsley filed an "agreed entry of withdrawal of notice of appeal" just nine days later. This Court then dismissed his case on December 8, 1999. Because Mr. Horsely did not provide a showing of good cause for his over 22-year delay his application must be denied.

{¶3} Even if Mr. Horsley had filed a timely application, "[n]either App.R. 26(B) nor *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204, provides for second and subsequent applications for reopening." *State v. Slagle*, 97 Ohio St.3d 332, 2002-Ohio-6612, 779 N.E.2d 1041, ¶ 7. Moreover, the Supreme Court of Ohio held in *Slagle* that the doctrine of res judicata applies to bar new claims of ineffective assistance of counsel that could have been raised in an initial application to reopen. *Id.* at ¶ 6-7. See also *State v. Sowards*, 4th Dist. Gallia No. 18CA2, 2018-Ohio-4173, ¶ 16. In *Sowards*, we stated as follows:

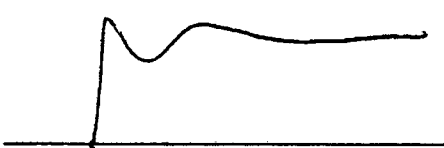
> "App.R. 26(B) is not 'an open invitation for persons sentenced to long periods of incarceration to concoct new theories of ineffective assistance of appellate counsel in order to have a new round of appeals.' " *Sowards* at ¶ 16, quoting *State v. Sowards*, 4th Dist. Gallia No. 06CA13 (Nov. 18, 2017) (webcite unavailable), in turn quoting *State v. Reddick*, 72 Ohio St.3d 88, 90-91, 647 N.E.2d 784 (1995).

{¶4} Accordingly, because Mr. Horsley's application for delayed reopening is untimely and also barred by the doctrine of res judicata as a successive application, his application for delayed reopening is denied.

{¶5} The clerk is **ORDERED** to serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail. **IT IS SO ORDERED.**

Abele, J., & Wilkin, J.: Concur.

FOR THE COURT



Michael D. Hess
Administrative Judge

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

State of Ohio,

Plaintiff-Appellee,

v.

David K. Horsley,

Defendant-Appellant.

Case No. 99CA33

MAGISTRATE'S ORDER

Appellant, David K. Horsley, has filed a motion to reconsider; however, the certificate of service does not comply with App.R. 13(B) and Loc.R. 2. Pursuant to App.R. 13(B), "[c]opies of all documents filed by any party and not required by these rules to be served by the clerk shall, on or before the day of filing, be served by a party or person acting for the party on all other parties to the appeal." Loc.R. 2 provides, "the certification of service shall state specifically the name and address of each attorney and party served. A certification alone that all counsel and parties of record were served without giving their names and addresses will be deemed not in compliance with this rule."

Here, appellant has not signed or dated his certificate of service, nor has he stated specifically the name and address of each attorney and party served. Additionally, he has directed the certificate of service to "Ohio's 4th District Court of Appeals, Pickaway County," which is not a party to the case. Accordingly, within 10 days of the journalization of this order, appellant is **ORDERED** to serve a copy of the motion on the party or parties to this case and file a certificate of service with this Court. **FAILURE TO COMPLY WITH THIS ORDER MAY**

RESULT IN THE DENIAL OF THE MOTION.

The clerk shall serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail. **IT IS SO ORDERED.**

FOR THE COURT

Tasha R. Ruth
Magistrate

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

State of Ohio,	:	Case No. 99CA33
Plaintiff-Appellee,	:	
v.	:	**DECISION & JUDGMENT ENTRY**
David K. Horsley,	:	
Defendant-Appellant.	:	

Appellant, David K. Horsley, filed a "Motion for Reconsideration of his Appeal," which we treat as an application for reopening pursuant to App.R. 26(B). In support of his motion, Mr. Horsley alleges his attorney failed to properly file his appeal. Mr. Horsley requests that he be permitted to appeal the October 14, 1999 decision of the trial court denying his motion to withdraw his guilty plea. The state has not responded to Mr. Horsely's motion. Because Mr. Horsley failed to establish any genuine issue as to whether he was deprived of the effective assistance of counsel on appeal we dismiss his application for reopening.

A review of the online docket indicates Mr. Horsley pled guilty on May 3, 1999 in Pickaway County Common Pleas Court Case No. 1998CR184. On October 6, 1999, Mr. Horsley filed a notice of appeal, which he later withdrew on November 24, 1999. As a result, this Court filed an entry dismissing his appeal on December 8, 1999.

"A defendant in a criminal case may apply for reopening of the appeal

from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel." App.R. 26(B)(1). "Reversal of a conviction for ineffective assistance of counsel requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial." *State v. Koster*, 4th Dist. Ross No. 14CA25, 2017-Ohio-7499, ¶ 8, citing *State v. Drummond*, 111 Ohio St.3d 14, 2006–Ohio–5084, 854 N.E.2d 1038, ¶ 205.

" '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.' " *State v. Moore*, 93 Ohio St.3d 649, 650, 2001-Ohio-1892, 758 N.E.2d 1130, quoting App.R. 26(B)(5). The appellant "bears the burden of establishing that there was a 'genuine issue' as to whether he has a 'colorable claim' of ineffective assistance of counsel on appeal." *Id.*, at 651 citing *State v. Spivey*, 84 Ohio St.3d at 25, 701 N.E.2d at 697.

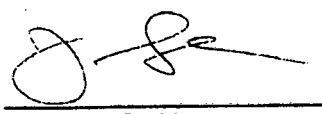
Here, it appears trial counsel for Mr. Horsley properly filed a notice of appeal, which included a motion for the preparation of complete transcript of proceedings at state expense, an affidavit of indigency, a statement, praecipe, and notice to court reporter, and a docketing statement. Then, just over one month later, an agreed entry of withdrawal of notice of appeal was filed, which contained Mr. Horsley's signature, the signature of his counsel, and the prosecutor's signature. As a result, this Court filed an entry dismissing the appeal.

Consequently, because Mr. Horsley's appellate counsel *did* properly file a notice of appeal and appellant failed to establish any genuine issue as to whether he was deprived of the effective assistance of counsel on appeal, we dismiss Mr. Horsley's application for reopening. **APPLICATION DISMISSED.**

The clerk is **ORDERED** to serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail. **IT IS SO ORDERED.**

Abele, J., and Wilkin, J.: Concur.

FOR THE COURT



Jason P. Smith
Presiding Judge

SUSPECT Horsley David K
LAST FIRST

STATEMENT OF DOMESTIC VIOLENCE

I Angela K Burgess would like to make the following statement.

On September 28 1998 AT [illegible] p.m., at
DATE DATE

140 Lewis Ave North
LOCATION

David K Horsley
NAME OF ASSAILANT

did assault/threaten/stalk Angela K Burgess
NAME OF VICTIM

the Boyfriend of the Assailant by:
RELATIONSHIP TO VICTIM

Restrained By Bradley Foard
1) Held Her Down Against Her Will
2) Hit Her In The Right Eye With
Her Fist, Causing A Blackened/
Bruised Eye.

the assailant is a member of the same family and/or household as the victim (Domestic violence cases only).

Angela K Burgess
COMPLAINING WITNESS

09-27-98
DATE

[signature]
SIGNATURE OF WITNESS TO SIGNING