

The Supreme Court of Ohio

State of Ohio

Case No. 2025-1392

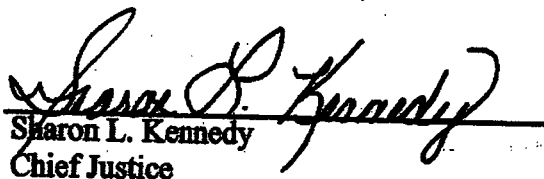
v.

ENTRY

Myshawn Stanley

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

(Hamilton County Court of Appeals; No. C-240356)


Sharon L. Kennedy
Chief Justice

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,

: APPEAL NO. C-240356

Plaintiff-Appellee,

:

vs.

:

MYSHAWN STANLEY,

:

**ENTRY DENYING APP.R.
26(B) APPLICATION TO
REOPEN DIRECT APPEAL**

Defendant-Appellant.

:

This cause is before the court on defendant-appellant Myshawn Stanley's App.R. 26(B) application to reopen this appeal. The State did not file a response.

A criminal defendant 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); *State v. Leyh*, 2022-Ohio-292. 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." App.R. 26(B)(5). The applicant bears the burden of demonstrating a "genuine issue" as to whether there is a 'colorable claim' of ineffective assistance of appellate counsel." *Leyh* at ¶ 21, citing *State v. Spivey*, 1998-Ohio-704.

Courts review claims of ineffective assistance of appellate counsel under the same two-pronged analysis for ineffective assistance of trial counsel set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Leyh* at ¶ 17. Thus, the applicant must prove that his appellate counsel was deficient for failing to raise the issues he now presents and that there was a reasonable probability of success had he presented those claims on appeal. *Id.* at ¶ 18.

In his timely application, Stanley argues that his appellate counsel was ineffective for failing to raise two assignments of error, both of which challenge his convictions for allied offenses of similar import.

OHIO FIRST DISTRICT COURT OF APPEALS

"Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one." R.C. 2941.25(A). However, the state and a defendant may, as part of a plea agreement involving multiple offenses, stipulate that the offenses were committed with separate animus, and therefore subject the defendant to more than one conviction and sentence. *State v. Underwood*, 2010-Ohio-1, ¶ 29. Here, Stanley stipulated, as part of his plea agreement read into the record, that the offenses of felonious assault and involuntary manslaughter were committed with a separate animus. Because Stanley stipulated that the offenses were committed with a separate animus, he waived the right to appeal the allied-offense issue. *State v. Williams*, 2016-Ohio-376, ¶ 5-11 (1st Dist.); *State v. Black*, 2016-Ohio-383, ¶ 16-17 (8th Dist.). Because he waived that right, Stanley cannot demonstrate a colorable claim of ineffective assistance of appellate counsel.

Accordingly, the court finds the application to reopen is not well taken and denies the same.

KINSLEY, P.J., CROUSE and BOCK, JJ.

To the clerk:

Enter upon the journal of the court on SEP 10 2025.

By: *Jennifer J. Kinsey* (Copies sent to all counsel)
Presiding Judge