

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

SUMMER ROMEO,

Defendant-Appellant.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 14 MA 0060**

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Motion to Reopen Appeal

**BEFORE:**

Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

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**JUDGMENT:**

Overruled.

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*Atty. Paul J. Gains*, Mahoning County Prosecutor and  
*Atty. Ralph M. Rivera*, Assistant Prosecuting Attorney  
21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee

*Summer Romeo, Pro se*, #089-578  
Ohio Reformatory for Women (ORW), 1479 Collins Avenue, Marysville, Ohio 43040.

Dated: June 20, 2018

**PER CURIAM.**

{¶1} Appellant Summer Romeo has filed an Application for Reopening her appeal pursuant to App.R. 26(B). She was convicted for complicity to improperly discharge a firearm at or into a cohabitation in violation of R.C. 2923.161(A)(1)(C), a firearm specification pursuant to R.C. 2941.145(A), and a firearm specification under R.C. 2941.146(A). She was sentenced to a term of imprisonment of three years on the substantive crime, plus three years for the R.C. 2941.145(A) firearm specification and five years for the firearm specification in R.C. 2941.146(A). These were to be served consecutively, for an aggregate sentence of eleven years in prison.

{¶1} Appellant's conviction was based on a drive-by shooting that occurred after Appellant had sent numerous threatening text messages to the victim of the crime. Witnesses identified Appellant and her vehicle as being present at the time that shots were fired at the residence. On direct appeal, Appellant raised sufficiency and weight of the evidence challenges to her conviction, and also argued that the trial court failed to merge allied offense of similar import. We affirmed Appellant's conviction and sentence.

{¶2} A criminal defendant may apply for reopening of her appeal from the judgment of conviction and sentence based on a claim of ineffective assistance of appellate counsel. App.R. 26(B)(1). The application for reopening cannot merely allege that appellate counsel rendered ineffective assistance for failing to brief certain issues. Rather, the application must demonstrate that there is a "genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal." App.R. 26(B)(5).

{¶3} Appellant's application suffers from several procedural and substantive defects. Pursuant to App.R. 26(B)(1), Appellant was required to file her application for reopening within 90 days of the journalization of our judgment entry. "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*, 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861, ¶ 7.

{¶4} If an application for reopening is not filed within the 90-day period set forth in App.R. 26(B)(1), an appellant must make a showing of good cause for the untimely filing. App.R. 26(B)(2)(b). While Appellant concedes that her application is untimely, she offers no explanation for her untimeliness.

{¶5} Next, the application does not comply with the briefing requirements of App.R. 26(B)(2)(c). Rather than stating specific assignments of error, Appellant provides general bullet points and caselaw, with little to no argument addressing the specific facts in this case. Likewise, Appellant did not fulfill the requirements of App.R. 26(B)(2)(d), insofar as she failed to submit 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), and the manner in which the deficiency prejudicially affected the outcome of the appeal.

{¶6} Even assuming that Appellant had complied with the requirements of App.R. 26(B)(1) and (2), she fails to meet the standard for reopening this appeal. The test for ineffective assistance of appellate counsel has two parts: establishing that

counsel's performance was deficient, and that this resulted in prejudice. *State v. Tenace*, 109 Ohio St.3d 451, 2006-Ohio-2987, 849 N.E.2d 1, ¶ 5, citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); App.R. 26(B)(9).

{¶7} Appellant must show that counsel's performance was so deficient that it fell below an objective standard of reasonableness and, but for this substandard representation, the outcome of the case would have been different. *Strickland* at 687. Establishing ineffective assistance of appellate counsel means that the applicant must prove that counsel was deficient for failing to raise the issues now presented and that there was a reasonable probability of success had applicant presented those claims on appeal. *State v. Were*, 120 Ohio St.3d 85, 2008-Ohio-5277, 896 N.E.2d 699, ¶ 10-11.

{¶8} Appellant also cites evidence not offered at trial involving the gun, bullet casings, and gunshot residue tests, to assert sufficiency and manifest weight of the evidence challenges. Her argument ignores the evidence actually offered at trial, which we previously held was sufficient to sustain the jury's verdict in this case. She further argues that the shooter and the driver were not identified during the 9-1-1 call. That argument was both advanced and rejected on appeal.

{¶9} Appellate counsel need not raise every possible issue in order to render constitutionally effective assistance. *Tenace* at ¶ 7, citing *Jones v. Barnes*, 463 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). Counsel is expected to focus on the stronger arguments and leave out the weaker ones, as this strategy is generally accepted as the most effective means of presenting a case on appeal. *State v. Adams*, 7th Dist. No. 08 MA 246, 2012-Ohio-2719, ¶ 8-12.

{¶10} Finally, Appellant contends that witnesses were never subpoenaed or compelled to testify on her behalf. As this final ineffective assistance argument relates to trial counsel, not appellate counsel, it is inapplicable here.

{¶11} Because Appellant has failed to timely file her application for reopening, and failed to establish a genuine issue as to whether she was deprived of the effective assistance of counsel on appeal, her application is overruled.

**JUDGE CHERYL L. WAITE**

**JUDGE GENE DONOFRIO**

**JUDGE CAROL ANN ROBB**

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**