

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff- Appellee,

v.

JUMAL EDWARDS,

Defendant- Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 07 MA 0235

Application to Reopen

BEFORE:

Carol Ann Robb, Gene Donofrio, David A. D'Apolito, Judges.

JUDGMENT:

Denied.

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

Atty. Timothy Young, Ohio Public Defender, *Atty. Craig Jaquith*, Senior Assistant Public Defender, 8 East Long Street, 11th Floor, Columbus, Ohio 43215 for Defendant-Appellant.

Dated: March 3, 2020

PER CURIAM.

{¶1} On February 3, 2020, almost 11 years after this court decided his direct appeal, Defendant-Appellant Jumal Edwards filed an application to reopen the appeal in *State v. Edwards*, 7th Dist. Mahoning No. 07 MA 235, 2009-Ohio-1205.

{¶2} In the direct appeal, we affirmed the convictions for aggravated robbery with a firearm specification, three counts of felonious assault with firearm specifications, and four counts of complicity to commit felonious assault with firearm specifications. *Id.* at ¶ 1, 48. However, as to the trial court’s imposition of consecutive sentences for the firearm specifications for felonious assault and complicity to commit felonious assault, we reversed the consecutive sentences and merged the specifications for purpose of sentencing. *Id.* Accordingly, this court modified the aggregate sentence from 97 years to 67 years. *Id.*

{¶3} Appellant’s application for reopening, pursuant to App.R. 26(B)(1), asserted appellate counsel was ineffective for failing to argue for merger of the convictions for aggravated robbery, felonious assault and complicity to commit felonious assault. We have previously explained that an application for reopening cannot merely allege that appellate counsel rendered ineffective assistance for failing to brief certain issues. *State v. Callahan*, 7th Dist. Mahoning No. 97 CA 0224, 2019-Ohio-941, ¶ 1. Instead, the applicant must demonstrate that there is a “genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal.” *Id.* The applicant must prove both that his appellate counsel was deficient for failing to raise the issues he now presents and that he was prejudiced by this failure. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The applicant “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.” *State v. Spivey*, 84 Ohio St.3d 24, 25, 1998–Ohio–704, 701 N.E.2d 696.

{¶4} Pursuant to App.R. 26(B)(1), Appellant was required to file his application for reopening within 90 days of the journalization of our judgment entry. “The 90-day

requirement in the rule is ‘applicable to all appellants[.]’ ” *State v. LaMar*, 102 Ohio St.3d 467, 2004-Ohio-3976, 812 N.E.2d 970, ¶ 9, quoting *State v. Winstead*, 74 Ohio St.3d 277, 278, 658 N.E.2d 722 (1996).

{¶5} The judgment entry and opinion in the direct appeal was journalized March 11, 2009. Therefore, the deadline for a timely application for reopening was June 9, 2009. Clearly, the February 3, 2020 application is untimely.

{¶6} Pursuant to App.R. 26(B)(2) 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. The filing offers no reason why Appellant waited nearly 11 years for filing the application. The Ohio Supreme Court’s most recent pronouncement on merger occurred in 2015, *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892. Appellant makes no argument as to whether that case supports his position or why there is a four-year delay in filing the application after the pronouncement of that decision. In all, the filing is devoid of any reason for the untimely filing of the application. Accordingly, Appellant has failed to show good cause required by App.R. 26(B)(2)(b) for the untimely filing of the application.

{¶7} Application denied.

JUDGE CAROL ANN ROBB

JUDGE GENE DONOFRIO

JUDGE DAVID A. D’APOLITO

NOTICE TO COUNSEL

This document constitutes a final judgment entry.