

[Cite as *State v. Jackson*, 2018-Ohio-2308.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104991

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

EDWARD R. JACKSON

DEFENDANT-APPELLANT

JUDGMENT:
APPLICATION DENIED

Cuyahoga County Court of Common Pleas
Case Nos. CR-15-601757-A, CR-16-603688-A, and CR-16-605053-A
Application for Reopening
Motion No. 511700

RELEASE DATE: June 13, 2018

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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TIM McCORMACK, P.J.:

{¶1} On October 31, 2017, the applicant, Edward R. Jackson, pursuant to App.R. 26(B), applied to reopen this court's judgment in *State v. Jackson*, 8th Dist. Cuyahoga No. 104991, 2017-Ohio-7167, in which this court affirmed Jackson's consecutive sentences for three charges of burglary and other offenses, but remanded the case to the trial court to incorporate into the journal entry the necessary statutory findings it made at the sentencing hearing. Jackson now argues that his appellate counsel was ineffective for not arguing that his convictions for burglary should have merged as allied offenses. The state of Ohio filed its brief in opposition on November 30, 2017. For the following reasons, this court denies the application to reopen.

{¶2} In order to establish a claim of ineffective assistance of appellate counsel, the applicant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), *cert. denied*, 497 U.S. 1011, 110 S.Ct. 3258, 111 L.Ed.2d 768 (1990); and *State v. Reed*, 74 Ohio St.3d 534, 660 N.E.2d 456 (1996).

{¶3} In October 2015, Jackson trespassed into a Cleveland Clinic office and stole credit cards and other items. In December 2015, he trespassed into The Veterans' Administration building ("VA") and stole a cell phone and other items. Two weeks later he trespassed into an attorney's law office and tried to steal a purse; however, he was caught on this attempt.

{¶4} In *State v. Jackson*, Cuyahoga C.P. No. CR-15-601757-A, the Cleveland Clinic case, Jackson pled guilty to burglary, identity theft, and misuse of a credit card, and the judge sentenced him to a total of 18 months. In *State v. Jackson*, Cuyahoga C.P. No. CR-16-603688-A, the law office case, Jackson pled guilty to burglary and the judge sentenced

him to three years. In *State v. Jackson*, Cuyahoga C.P. No. CR-16-605053-A, the VA case, Jackson pled guilty to burglary and the judge sentenced him to three years. The sentences for the VA case and the law office case are to be served consecutively, but concurrently to the Cleveland Clinic case.

{¶5} Jackson argues that because his actions and animus were the same — trespassing into occupied structures with the purpose to steal personal property — the crimes are allied offenses.

{¶6} This argument is baseless. Jackson committed the crimes on different dates, in different buildings, and against different people. The allied offenses statute, R.C. 2941.25, does not apply to different acts, committed on different days, and against different people. *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.2d 892. Appellate counsel properly rejected an argument based on sophistry.

{¶7} Accordingly, the application for reopening is denied.

TIM McCORMACK, PRESIDING JUDGE _____

ANITA LASTER MAYS, J., and
LARRY A. JONES, SR., J., CONCUR