

[Cite as *State v. Campbell*, 2019-Ohio-5112.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 105622
 v. :
 :
 ISAIAH CAMPBELL, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: December 6, 2019

Cuyahoga County Court of Common Pleas
Case No. CR-16-604551-B
Application for Reconsideration
Motion No. 531890

Appearances:

Paul Mancino, Jr., *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Carl Mazzone, Assistant Prosecuting
Attorney, *for appellee.*

LARRY A. JONES, SR., J.:

{¶ 1} Applicant, Isaiah Campbell, filed a delayed application for reconsideration of the decision issued on April 26, 2018, in *State v. Campbell*, 8th Dist. Cuyahoga No. 105622, 2018-Ohio-1639. In an abundance of caution, this court

will analyze the filing as a delayed application for reconsideration under App.R. 26(A) and an application to reopen the appeal under App.R. 26(B). Under both standards, Campbell is not entitled to relief. Therefore, the application is denied.

{¶ 2} Campbell was convicted of two counts of rape, two counts of kidnapping, aggravated robbery, felonious assault, and grand theft; with attendant firearm specifications and a sexually violent predator specification. *Campbell* at ¶ 12. He received a sentence of 36-years-to-life. This sentence was ordered to be served consecutive to a 14-year prison sentence that was previously imposed in an unrelated case. *Id.*

{¶ 3} Campbell appealed, but did not argue that his sentence constituted a de facto life sentence. This court overruled Campbell's six assignments of error and affirmed his convictions and sentences. *Id.* at ¶ 49.

{¶ 4} His codefendant, Dashawn Strowder, was convicted of similar crimes and received a sentence of 50-years-to-life. *State v. Strowder*, 8th Dist. Cuyahoga No. 105569, 2018-Ohio-1292, ¶ 14. This sentence was ordered to be served consecutive to a nine-year prison sentence imposed in an unrelated case. *Id.* In Strowder's appeal, he argued that the sentence was tantamount to a life sentence imposed on a non-homicide juvenile offender, which was unlawful under the United States Supreme Court's decision in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), and the Supreme Court of Ohio's decision in *State v. Moore*, 149 Ohio St.3d 557, 2016-Ohio-8288, 76 N.E.3d 1127. On April 5, 2018, this court reversed Strowder's sentence and remanded the matter for resentencing with

instructions for the trial court to consider when Strowder would become eligible for parole in light of *Graham* and *Moore*, and whether the length of sentence would allow him a meaningful opportunity for parole. *Id.* at ¶ 44.¹

{¶ 5} Despite the fact that the decision remanding Strowder’s case for resentencing was issued prior to the appellate decision in Campbell’s case,² Campbell did not immediately file an application for reconsideration raising this sentencing issue, or file an application to reopen his appeal based on appellate counsel’s failure to raise this issue. Over 16 months later, on September 13, 2019, Campbell filed a delayed motion for reconsideration raising the claim for the first time.

{¶ 6} An application for reconsideration is governed by App.R. 26(A)(1)(a), which provides that an “[a]pplication for reconsideration of any cause or motion submitted on appeal shall be made in writing no later than ten days after the clerk has both mailed to the parties the judgment or order in question and made a note on the docket of the mailing as required by App.R. 30 (A).”

{¶ 7} The rule does not readily provide a standard that appellate courts should employ to determine the merits of an application for reconsideration, but this court has previously stated,

when reviewing an application for reconsideration, [the court] must determine whether the motion calls to the attention of the court an

¹ On remand, the trial court imposed a sentence of 34-years-to-life, consecutive to a nine-year sentence imposed in an unrelated Stark County Case. *State v. Strowder*, 8th Dist. Cuyahoga No. 107855, 2019-Ohio-4573, ¶ 5.

² The decision in Strowder’s appeal was released on April 5, 2018, and the decision in Campbell’s appeal was released on April 26, 2018.

obvious error in its decision or raises an issue for consideration that was either not considered at all or not fully considered by the court. *Cleveland Clinic Found. v. Bd. of Zoning Appeals*, 8th Dist. Cuyahoga No. 98115, 2012-Ohio-6008; *State v. Dunbar*, 8th Dist. Cuyahoga No. 87317, 2007-Ohio-3261. In addition, an application for reconsideration is not intended to simply allow a party to challenge an opinion because of a disagreement with the conclusion reached and the logic employed by the appellate court. *Deutsche Bank Natl. Trust Co. v. Greene*, 6th Dist. Erie No. E-10-006, 2011-Ohio-2959; *In re Richardson*, 7th Dist. Mahoning No. 01-CA-78, 2002-Ohio-6709. Finally, an application for reconsideration must point to an obvious error in the appellate decision or raise for consideration issues that were not considered at all or not fully considered. *Columbus v. Hodge*, 37 Ohio App.3d 68, 523 N.E.2d 515 (10th Dist.1987); *Matthews v. Matthews*, 5 Ohio App.3d 140, 450 N.E.2d 278 (10th Dist.1981).

State v. Ramos, 8th Dist. Cuyahoga No. 103596, 2017-Ohio-7712, ¶ 10.

{¶ 8} App.R. 26(B)(1) provides a ten-day deadline for filing an application for reconsideration, but pursuant to App.R. 14(B), that deadline may be extended on a showing of “extraordinary circumstances.” Extraordinary circumstances may be demonstrated by a subsequent decision of the Ohio Supreme Court:

Ohio appellate courts have granted applications for delayed reconsideration well over a year after the issuance of the original decision, citing subsequent decisions of this court as providing the required extraordinary circumstances. *See, e.g., State v. Finley*, 1st Dist. Hamilton No. C-061052, 2010-Ohio-5203, ¶ 6 (reconsideration granted over two years after original decision); *State v. Gandy*, 1st Dist. Hamilton No. C-070152, 2010-Ohio-2873, ¶ 8 (reconsideration granted 20 months after original decision); *Lyttle v. State*, 12th Dist. Butler No. CA2010-04-089, 2012-Ohio-3042, 2012 WL 2520466, *1 (reconsideration granted over 18 months after original decision).

Moore, 149 Ohio St.3d 557, 2016-Ohio-8288, 76 N.E.3d 1127, at ¶ 90. The *Moore* court went on to find that the appellate court abused its discretion in denying a delayed application for reconsideration filed in that case. *Id.* at ¶ 99. Among the

reasons given, the Ohio Supreme Court found that Moore had raised the *Graham* issue at the earliest opportunity, but that effort was rejected. *Id.* at 93. When it was finally raised in a delayed application for reconsideration, the appellate court was presented with an opportunity to properly apply the holding in *Graham* to Moore's case, but it failed to do so. *Id.* at 94. The *Moore* court found this constituted extraordinary circumstances that warranted the appellate court's entertainment of the untimely motion. *Id.* at 99.

{¶ 9} However, what constituted extraordinary circumstances in *Moore* does not exist in this case. Moore's delayed application for reconsideration was premised on a new constitutional right that was not recognized at the time of Moore's appeal. Moore's original appeal was decided on March 24, 2009. *Graham* was decided on May 17, 2010. Moore raised the issue recognized in *Graham* at the earliest feasible instance, which was rejected. *Moore* at ¶ 93. He then raised the issue in a delayed application for reconsideration. *Id.* at ¶ 94.

{¶ 10} Unlike *Moore*, if Campbell's sentence was constitutionally infirm, he could have and should have raised the issue on appeal, in a timely application for reconsideration, or a timely application for reopening. Campbell's situation lacks the demonstration of extraordinary circumstances that existed in *Moore*. There has been no intervening decision of the United States or Ohio Supreme Court that Campbell could not have raised in his direct appeal. Campbell has not pointed out any other alleged extraordinary circumstances in his application. As such, Campbell's delayed motion for reconsideration is denied.

{¶ 11} In his application, Campbell asserts that “[o]mitted from the consideration of the court was the pronouncement by the Ohio Supreme Court concerning sentencing a juvenile to an effective life sentence.” That is because this issue was not raised in the appeal. Campbell raised six assignments of error on appeal:

I. The trial court erred in considering incompetent hearsay evidence in determining that appellant was a sexual violent predator.

II. The trial court erred in finding that appellant was a sexual violent predator upon insufficient evidence.

III. The finding that appellant was a sexual violent predator was against the manifest weight of the evidence.

IV. Ohio’s sexual violent predator specification law violates due process.

V. Trial counsel was ineffective at the sexual violent predator hearing.

VI. The jury verdict in count three was against the manifest weight of the evidence.

Campbell, 8th Dist. Cuyahoga No. 105622, 2018-Ohio-1639, at ¶ 13. As a result, Campbell’s application may also be read as raising issues of ineffective assistance of appellate counsel. In an abundance of caution, this court will also analyze the filing under the standard for an application for reopening under App.R. 26(B).

{¶ 12} App.R. 26(B) offers a criminal defendant a limited opportunity to assert a claim of ineffective assistance of appellate counsel. App.R. 26(B)(5) states that “[a]n 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.”

{¶ 13} The rule includes a strict deadline that states that the application must be filed “within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time.” App.R. 26(B)(1). “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).

{¶ 14} Campbell’s filing also fails to qualify for relief under App.R. 26(B) because his application is devoid of any reason justifying the delay in filing. App.R. 26(B) has a strict 90-day filing deadline. *LaMar* at ¶ 7-9. Campbell’s application was filed over 16 months after the appellate decision in his case was journalized. The filing does not evince any cause for the delay, or why the delay should be excused. The application is devoid of any showing of good cause required by App.R. 26(B)(2)(b). The issue Campbell now advances was known at the time the decision in his direct appeal was issued — or even prior to that when the decision in his codefendant’s case was released. The length of the aggregate sentence could have been raised in a timely application for reopening. Therefore, the application is also denied under the standard for reopening of an appellate decision under App.R. 26(B).

{¶ 15} Application denied.

LARRY A. JONES, SR., JUDGE

PATRICIA ANN BLACKMON, P.J., and
ANITA LASTER MAYS, J., CONCUR