

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 106998  
 v. :  
 :  
 OCIE WILLIAMS, :  
 :  
 Defendant-Appellant. :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: APPLICATION DENIED**  
**RELEASED AND JOURNALIZED: July 19, 2019**

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Cuyahoga County Court of Common Pleas  
Case No. CR-17-616093-A  
Application for Reopening  
Motion No. 527038

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Mary M. Frey, Assistant Prosecuting Attorney, *for appellee*.

Ocie Williams, *pro se*.

MARY EILEEN KILBANE, A.J.:

{¶ 1} Ocie Williams has filed a timely application for reopening pursuant to App.R. 26(B). Williams is attempting to reopen the appellate judgment, rendered in *State v. Williams*, 8th Dist. Cuyahoga No. 106998, 2019-Ohio-10, that affirmed

his conviction and sentence for four counts of aggravated burglary (R.C. 2911.11(A)(2)) with one- and three-year firearm specifications (R.C. 2941.141/R.C. 2941.145), two counts of felonious assault (R.C. 2903.11(A)(1)) with one- and three-year firearm specifications (R.C. 2941.141/R.C. 2941.145), improperly discharging firearm at or into habitation (R.C. 2923.161(A)(1)) with one- and three-year firearm specifications (R.C. 2941.141/R.C. 2941.145), and having weapons while under disability (R.C. 2923.13(A)(3)). We deny Williams's application for reopening.

{¶ 2} An application for reopening, pursuant to App.R. 26(B), provides a means to raise a claim of ineffective assistance of appellate counsel in a criminal appeal. The analysis set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), for ineffective assistance of counsel is the appropriate standard to assess whether Williams has raised a “genuine issue” as to the ineffectiveness of appellate counsel in his request to reopen under App.R. 26(B)(5). *See State v. Spivey*, 84 Ohio St.3d 24, 25, 701 N.E.2d 696 (1998). To establish ineffective assistance, Williams must demonstrate that his counsel was deficient in failing to raise the issues he now presents and that there was a reasonable probability of success had the claims been presented on appeal. *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraph three of the syllabus.

{¶ 3} In support of his application for reopening, Williams raises one proposed assignment of error:

Appellate counsel was ineffective for failing to raise the trial court erred when it imposed more than one term under R.C. 2941.145 when it involves the same act or transaction violating R.C. 2929.14(B)(1)(b)

thus violating 5th Amendment of the U.S. Constitution and the Ohio Constitution Art. I Sect. 10 procedural due process of law.

{¶ 4} Williams, through his sole proposed assignment of error, argues that he was prejudiced by the failure of appellate counsel to argue on appeal a sentencing error. Specifically, Williams argues that the trial court erred by imposing consecutive three-year terms of incarceration as a result of two firearm specifications. We disagree.

{¶ 5} Herein, the trial court sentenced Williams to prison for a total of ten years: (1) four years on each principal count but concurrent with each other; and (2) three years on each of two separate firearm specifications, but consecutive to each other and consecutive to the principal offenses.

{¶ 6} Multiple firearm specifications may be subject to merger under R.C. 2929.14. Ordinarily, a trial court is prohibited from imposing multiple consecutive prison terms on multiple firearm specifications for “felonies committed as part of the same act or transaction” pursuant to R.C. 2929.14(B)(1)(b). However, R.C. 2929.14(B)(1)(g) permits the imposition of multiple prison terms, with regard to multiple firearm specifications, if the defendant is convicted of or pleads guilty to two or more felonies that include one of the specific offenses of aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape.

If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, *felonious assault*, or rape, and if the offender is convicted of or pleads

guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, *the sentencing court shall impose on the offender the prison term specified under division (B)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty* and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

(Emphasis added.)

{¶ 7} Williams’s conviction for the offense of felonious assault, along with his conviction for the serious felony of aggravated burglary, mandated that the trial court impose consecutive prison terms of incarceration with regard to two firearm specifications. *State v. Nelson*, 8th Dist. Cuyahoga No. 104336, 2017-Ohio-5568; *State v. Nitsche*, 8th Dist. Cuyahoga No. 103174, 2016-Ohio-3170; *State v. Young*, 8th Dist. Cuyahoga No. 102202, 2015-Ohio-2862; *State v. Vanderhorst*, 8th Dist. Cuyahoga No. 97242, 2013-Ohio-1785.

{¶ 8} Williams’s sentence was not improper and he has failed to establish any prejudice through his sole proposed assignment of error.

{¶ 9} Accordingly, we deny Williams’s application for reopening.

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MARY EILEEN KILBANE, ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and  
LARRY A. JONES, SR., J., CONCUR