

ORIGINAL

IN THE THE SUPREME COURT OF OHIO

15-0718

STATE OF OHIO

Plaintiff – Appellee

ON APPEAL FROM THE
CUYAHOGA COUNTY COURT
OF APPEALS, EIGHTH DISTRICT

vs.

C. A. No. 100805

ANDREY L. BRIDGES

Defendant – Appellant

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT ANDREY L. BRIDGES

ANDREY L. BRIDGES - #650-493
501 THOMPSON RD
P.O. BOX 8000
CONNEAUT, OHIO 44030

DEFENDANT- APPELLANT, *PRO SE*

CUYAHOGA COUNTY PROSECUTOR
1200 ONTARIO STREET
CLEVELAND, OHIO 44113

COUNSEL FOR APPELLEE: STATE OF OHIO

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Journal Entry Opinion of the Cuyahoga County Court of Appeals
(April 14th,2015)

**EXPLANATION OF WHY THIS FELONY CASE RAISES A
SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS
ONE OF PUBLIC OR GREAT GENERAL INTREST**

Different courts have generalized effective assistance of counsel, and have had different agreements. And those disagreements are hampering the errors and violations caused by the trial transcripts and trial counsel's on appeals. It is hard to see all of the procedures that hampers the right to a fair trial, when an appellant is being represented by counsel, even though it is true that an appellant has a right to counsel and it's a right given by law. However it's not hard to see what wrongs in pretrial proceedings that an attorney representation has caused or failed to do, and what could have crippled an appellants trial,

When the record is broken, the saying, the right to counsel gives an appellant a right to a fair trial, yet this can not be right. Especially when the right to counsel is violating a due process claim, which the Fourteenth Amendment to the Ohio Constitution gives. The Supreme Court have made a ruling and Analyzed this right, that in an Supreme Court landmark case *Powell V. Alabama*. 287 U.S. 45, 53 S. Ct 55, 77 L. Ed. 158 (1932).

It was recognized that the Sixth Amendment guarantee does not apply only to the trial itself. In fact, the Court noted that the phase of the criminal proceedings where the right to counsel is most critical is the time of arraignment until the beginning of trial, when consultation, thorough-going investigation and preparation are vitally important. The Court concluded that defendants were as much entitled to such aid during that period as at the trial itself. Realizing the importance of representation during the earlier phases of the criminal proceedings, the Supreme Court has interpreted the right to counsel to apply to all critical stages of the proceedings. The scope of the term critical stage has evolved over the years to encompass a greater portion of the pre-trial stages.

The modern trend is that the right to counsel attaches from the moment judicial proceedings have been initiated and remains throughout the course of the entire judicial proceeding, including sentencing. The appellant should have been ensured that he has been properly represented during all critical stages. Since the prosecution will seek to introduce confessions, physical evidence, and eyewitness identifications at trial. These pre-trial proceedings invoked the right to counsel. Since the defendant was not properly represented at those stages, a constitutional violation have occurred. The "Appellant" is asking this Honorable Court to review the record and review all the event's that the appellant was denied. Appellant argues that the evidence was obtained during a critical stage, in violation of the his Sixth Amendment. Also is asking to review, why is it that the lower courts is not acknowledging that law which is given to all. And that right's is not being honored, since the errors that makes cases to be remanded, is denied by the right of counsel.

This is a great public interest, since pretrial constitute as a main stage in a case especially when expecting to go to trial. The failure's of an attorney's to make an established record in case's that's recommended to go to trial, if theirs a possibility of being convicted. Could this court or any court say this is not hampering the appellant to a fair and a just trial, or even a full review on appeal. Since the appeal courts break down the record of just using trial transcripts. When pre trial is where the challenges of inferences are investigated, and the challenge to prove innocence by challenging the prosecutor case. Breaking the record in half is hampering the appellant and future appellant's from receiving a full review of the record to help support the appeal process, and since (the case is stating the *state v. appellant*) is a case in general, or whole. The question here is whether the record should be recognized as the entire record from the record of arrest to the record of conviction to the record of sentencing for the intent of prevailing on or a chance to prevail on appeal's.

And if so, an ineffective assistance claim or appeal should not be denied, when every argument is argued on that case and about that case. The rules of law is not being followed. (Prime example), *State of Ohio v. Andrey Bridges* C. A. No. 100805, Their was an conflict between the appellant and his attorney. The appellant requested for his attorney's to be removed from his case before trial started. The appeal court denied his 26(b) and said it was outside the record. The appellant has raised ineffective assistance counsel for his trial attorney's, saying they was unfit to go to trial since they had no defense to represent him, and by not having a defense, they caused the conviction, the appellant raised this argument in pre trial. The Eighth District Judicial Court of Appeals, dismissed his appeal for reopening and argues that every thing the appellant was arguing was outside the record even though it was raised, and is on the record. *State of Ohio v. Andrey Bridges* C. A. No. 100805. The case is not broken in half, there is not two or more case numbers. So to look at the case or the violations, it should be looked at from the beginning to the end and used on appeal, since violations happens at the time of arrest to the sentencing phases. Especially when the pretrial record shows genuine issues of fact for trial, the record should be allowed to say all of the record of the case, so the appellant and future appellant's could have a right to fair and full review on appeal's.

S.Ct. Prac. R. 7.08(B)(3) allows this Court to accept an appeal and enter judgment summarily. Accordingly, the Appellant request that this Honorable Court to accept jurisdiction and summarily reverse the Eighth District's decision in this case. The Appellant submits that this Court has sufficient information before it to determine that this appeal presents an ideal case for summary reversal.

This Court has jurisdiction over this appeal under S.Ct. Prac. 5.02(A)(2) because this case involves a felony. Based on the foregoing, this case raises a substantial constitutional question. Therefore, leave to appeal should be granted. The appellant requests that this Honorable Court either summarily reverse the Eighth District's decision, or to accept jurisdiction to hear this case on its merits.

Respectfully submitted,

Andrey L. Bridges
Andrey L. Bridges #650-493
Lake Erie Correctional Institution
501 Thompson Rd
P.O. Box 8000
Conneaut, Ohio 44030

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT, ANDREY L. BRIDGES, has been sent by U.S. Mail, first-class postage prepaid, to the Ohio Supreme Court 65 South Front Street Columbus, Ohio 43215-3431, on this 29 day of April 2015

STATEMENT OF THE FACTS

On May 13, 2013, a Cuyahoga County Grand Jury indicted the defendant-appellant Andrey Bridges for a multiple offense. Count One charged Aggravated Murder in violation of R.C. 2903.02(A). Count Two charged an alternative theory of Murder in violation of R.C. 2903.02(B). Count Three charged Felonious Assault in violation of R.C. 2903.11(A) (1). Count Four charged Kidnapping in violation of R.C. 2905.01(A)(2). Count Five charged Tampering with Evidence in violation of R.C. 2921.12(A)(1). Finally, Count Six charged Offenses Against a Human Corps in violation of R.C. 2927.01(B). Bridges entered a plea of not guilty at his arraignment on May 16, 2011.

A jury trial began on October 28, 2013. At the close of the state's case, the trial court granted a defense Rule 29 motion to dismiss Count Four, Kidnapping. On November 8, 2013, the jury returned a verdict of not guilty on Count One but guilty of the remaining counts. As to Count One, the jury found Bridges guilty of the lesser included offense of murder. The court merged the first three counts. The state elected to go forward with the lesser included offense of count one, R.C. 2903.02(A). The court sentenced Bridges to serve a term of 15 years to life for this offense. In addition, the court sentenced Bridges to a term of thirty months for Count Five and twelve months for Count Six. In sum, the court ordered an aggregate sentence of a term of 18 years and 6 months to life.

STATEMENT OF THE CASE

The state charged the defendant-appellant Andrey Bridges with the murder of Carl Acoff on May 13, 2013. Acoff allegedly took a taxi to Bridges residence on that date. The body of Acoff was found in a pond. Witnesses, Jason Quinones and William King, testified that on the morning in question, they observe Bridges with a cut hand bleeding, and that they saw Bridges standing at a fire pit with a fire. The defense argued that these two men, Quinones and King, were more likely to have committed the offense. The defense argued that the evidence was insufficient to prove that Bridges was the offender.

Jeffrey Bland lived in Olmsted Township in April of 2013. He rented one side of this property to a Jason Quinones. Bryan Tyler of the Olmsted Township Police Department answered a call to investigate an object in the pond near the premises. He testified that a body was poled in by the fire department personnel from the pond. (T.646) Officer Tyler photographed the scene. (T.647) Ken Schabitzer made a dive on April 17, 2013 at the pond site.

He assisted in the recovery of the body. He also found some yellow rope that was floating near where the body was first seen. One end was tied to a tree the other end was tied a rope and some length of a pipe, at one end to the other other. (T.696) It was determined that the pond was about eight feet in depth at its deepest point. (T.697) Martha Acoff was the mother of the decedent. (T.791) She testified that she noticed that her son Carl, decedent, began dressing as a girl in 2010. (T.792,795) The last time she saw him was New Year's Eve.

No one else in the family heard from him after this time. (T.797, 798) Nicole Cantie was the decedent's cousin. She knew his lifestyle due to his posting photos on Facebook.

She was not aware that he was prostituting himself until seeing something on social media. (T.818,819) She also noticed that he went missing in January of 2013. (T.820) On March 29, 2013, she filed a missing persons report. (T.821) Ms. Cantie testified that she was aware that there were Facebook postings in January from Carl Acoff. One was **January 12** and another was **January 22**. (T.831) She also noted that she had spoken to him on January 3. (T.835) Abdifatah Mohamoud was the driver of the taxi. The rider he picked up from Rondell Road looked like a man or a female, but he was not certain.

(T.1048) Mohamoud selected Bridges from a photo array on May 3, 2013. He was not certain of this selection. (T.1053) He thought he recognized his face from the photo array. It kind of looked like the customer. (T.1056) He did not remember because of the lighting conditions on that particular day.

He did not remember what clothes that they were wearing. He did not remember if the payer had facial hair. He did remember taking the rider and the payer to a convenient store to break a bill before taking them back to the McKenzie address. (T.1059, 1066) Mahamoud did not pay attention to their conversation when taking them back to McKenzie. (T.1068)

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW NO.1 The appellant was deprived due process and the effective assistance of appellate counsel as guaranteed under the Sixth and Fourteenth Amendments to the United States Constitution and Article 1 Section 10 and 16 of the Ohio Constitution for failing to raise a dead bang winner, prejudicing the appellant to receiving a Full and Fair review on direct appeal.

The standard for measuring effective assistance of counsel is a two- part test set forth by the Supreme Court in *Strickland v. Washington* and *United States v. Cronin*. His appellate counsel's performance was deficient and not functioning as the counsel guaranteed by the Sixth Amendment. With respect to Ohio R. App. P. 26(B)(5), his appellate counsel was deficient for failing to timely raise the issues he now presents and that there was a reasonable probability of success had he presented these claims on appeal. His appellate counsel should have with out a doubt raised, **ineffective assistance of Bridges trial counsel**, on his direct appeal to the Eight District Appellate Court. The United States Supreme Court has defined the level of responsibility appellate counsel owes a criminal defendant. In *Jones v. Barnes* (1983), 463 U.S. 745, the Court stated in the syllabus:

Defense counsel assigned to prosecute an appeal from a criminal conviction does not have a constitutional duty to raise every non-frivolous issue requested by the defendant. **The accused has the ultimate authority to make certain fundamental decisions regarding his case**, including the decision whether to take an appeal; and, with some limitations, he may elect to act as his own advocate. **Selecting the most promising issues for review** has assumed greater importance in an era when the time for oral argument is strictly limited in most courts and **when page limits on briefs are widely imposed**. (Emphasis supplied)

Effective appellate counsel must "winnow out weaker claims on appeal and focus on those more likely to prevail." *Burger v. Kemp*, 483 U.S. 776, 784, 107 S. Ct. 3114, 97 L. Ed. 2D 638 (1987) (citation omitted). His counsel's representation and performance was defective which resulted in prejudice. *Strickland*, 466 U.S. at 687 and requires that his conviction be vacated. There was a "**reasonable probability**" that had his appellate counsel presented on appeal, the full content of the inconsistent prior statements made by Quinones to police and

his trial testimony the outcome would have been different (**example**) Justice Boyle concurring, at ¶41 David Roose, a detective for the city of Euclid, testified that he specializes in digital evidence. Detective Roose testified that he examined Kings cell phone. He obtained the photo off of Kings phone that King took of Bridges standing by the fire pit. The date of the photo was **January 5th,2013**, and the time-stamp was **(3:27)** on the record it shows as **15:27 hours and 45 seconds**. A big time deference to the time he said he was at the location and the time the picture was taken. Detective Roose explained that the date and time may not be accurate because there are many variables that can affect time, including user modification. Detective Roose opined, however, that he did not think that this cell phone had been modified by the user.

¶38 King testified that on **January 5th, 2013**, he was living at Irene's house. He recalled leaving Irene's house with Quinones that morning. King said that Quinones told him that he had to pay some utility bills and check on his dog at his apartment in Olmsted township. King said that they arrived at Quinones apartment around **12:00pm**, yet the **picture used against the appellant shows they was their at 3:27. this shows that they was their from 12:00pm to 3:27pm**. The appellant contends that his appellate counsel could have also argued that there was an actual conflict between himself and trial counsel which certainly was brought to the court's attention via *Pro se* Motion. There was also ineffective assistance of appellate counsel due to the fact he could have argued, trial counsel failed to secure the needed expert witnesses on his behalf and call a witness to refute the testimony of the prosecution's "star witness" such as the appellant son. He knew about an injury that happened in the apartment which the state used to help convict the appellant.

Appellate counsel could have also presented he was prejudiced by his counsel failure to object to improper and prejudicial prosecutorial remarks when the state said they don't

know where when or what weapon was used but know that the appellant killed Accoff.

Appellant contends his trial counsel failed to subpoena his son as a material witness his testimony would have lead to a vindication. The appellant trial counsel should have also motioned the court to issue a gag order to prevent the newspapers from reporting the proceedings and/or the criminal background of Bridges to the public. Therefore, this would have prevented unfairness and prejudice in the minds of the jury, or a possibility despite the voir dire since their was no mind reader in trial to see if the publicity harmed the trial.

The propriety of granting or denying the public access to court proceedings can involve the weighing of competing factors. This is especially apparent when the proceeding at issue pertains to a high profile murder case involving a transgender and the circumstances surrounding the case have been the subject of considerable publicity. The trial court after having an evidence hearing and argument on the issue(s) involved in the case, (1) that there exists a reasonable and substantial basis for believing that public access could harm the jury or endanger the fairness of the adjudication, and (2) the potential for harm outweighs the benefits of public access." (Emphasis added.) in a pending high profile trial proceeding. *State v. Bridges* C A Case No. 100805. This ineffectiveness of his trial counsel prejudiced the defendant's ability to defend himself because his counsel did not have a defense strategy whatsoever.

{Because of concerns for due process and the right to effective assistance of counsel on an appeal, and because the term "defendant's counsel" as used in R.C. 2951.03(D)(1) includes both a defendant's trial counsel and a defendant's appellate counsel. Moreover, to justify the reopening of this appeal, the appellant establishes there was a genuine issue as to whether there is a colorable claim of ineffective assistance of counsel. Appellant asserts that failing to timely raise these issues he now presents, there was a reasonable probability of success had his appellate counsel presented these claims on appeal. Defendant's was deprived his right to due process of law, as protected by the Sixth and Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution. Despite the Eighth District Court of Appeals conclusion, it follows that the appellant's first argument is not meritless and this Honorable Supreme Court should sustain this assignment of error.}

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW NO. 2 The appellant was deprived the effective assistance of counsel as guaranteed to the Sixth Amendment to the United States Constitution.

Indeed, "[i]t has long been recognized that the right to counsel is the right to the effective assistance of counsel." *McMann v. Richardson* (1970), 397 U.S. 759, 771, 90 S. Ct. 1441, 25 L. Ed. 2d 763, fn. 4. Pre-trial period constitutes a critical period because it encompasses counsel's constitutionally imposed duty to investigate case. Bridges suffered prejudice by his counsel's failure to investigate (1) the DNA reports, (2) witnesses which could have provided exculpatory information, (3) all circumstantial evidence presented at trial, (4) the effects of pre-trial publicity, (5) the police reports more thoroughly, (6) the real possibility of someone else committing the crime, (7) subpoena all Facebook record(s) to investigate in detail, (8) subpoena an expert to analyze the cell phone records and towers for exonerative information, and (9) motion for a private investigator in a timely manner.

Attorneys, Henry Hilow David Grant, was appointed on his case by the court on June 12, 2013. Bridges trial Counsel(s) did not motion for a private investigator until October 28, 2013 once the jury selection began at trial. The appellant was deprive due process and a right to a fair trial. These errors complained amounted to a substantial violation of his counsel's essential duties to the client. Prejudice resulted because there was a reasonable probability that, but for his counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Strickland*, 466 U.S. at 687.

{ The appellant is not arguing tactical or strategic trial decisions of his trial counsel, but he asserts his counsel failure to investigate case thoroughly in timely manner and to present relevant evidence to court and opposing counsel was a glaring omission, causing deficiency, prejudice, which affected his substantial right }.

"The" Appellant trial counsel failed to act as reasonable professional and his failure to investigate case prior to trial made adversarial testing process unreliable where apparent extent of investigation was one prior conversation with Bridges. Similarly, here in *Wade v. Armontrout* (1986, CA8 Mo) 798 F.2d 304. In this instant matter, a conviction may generally be reversed if trial counsel is so negligent as to deny the defendant a substantial right, failing to make a motion to suppress, or failing to utilize a substantial defense. In *Williams v. Washington*, the court concluded that the defendant was denied effective assistance of counsel where counsel's lack of familiarity with the case and failure to investigate. Bridges appointed counsel did not call any witnesses or produce any evidence at trial. He also failed to move to discover any of the state's evidence, file any pretrial motions, or attempt to have any confessions excluded. *Williams v. Washington*, 59 F.3d 673, 682 (7th Cir. 1995). For the above reasons, it clearly demonstrates the appellant's counsel was ineffective, and his performance prejudiced the appellant. Therefore, the appellant request this Honorable Supreme Court to sustain this assignment of error.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW NO. 3 Appellant argues that he was deprived the right to an impartial jury because of the pretrial publicity in his case. A violation of his right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution and Article 1, Section 16, of the Ohio Constitution.

"A convicted defendant is entitled to the effective assistance of counsel on his first appeal as of right" This is the case of a murder involving a transgender individual. Harassment and retaliation occurs by a majority for being a transgender. The court referred to the victim as her, using female pronoun throughout the entire proceedings. A careful and searching voir dire should have been provided in this particular case to the test whether prejudicial pretrial publicity would have prevented the appellant from receiving an impartial jury from the locality.

A trial court can change venue when it appears that a fair and impartial trial cannot be held in that court. Ohio R. Crim. P. 18(B); Ohio Rev. Code Ann. §2901.12(K). There were several rally's held in communities to convict the appellant Bridges in regards to the media publicity. When prejudicial pretrial publicity is an issue, a showing of identifiable prejudice is unnecessary where a reasonable likelihood exists that inflammatory or prejudicial news coverage will prevent a fair trial. The remedy is for the judge to transfer the case to another county. Bridges trial counsel should have motioned for a change of venue due to the high publicity and public gathering's in protest to convict client for the said charge. Crim R. 18(B). Bridges trial counsel was ineffective for failing to argue this critical and pivotal issue at trial. Therefore, his appellate counsel was ineffective failing to bring forth this crucial issue on his direct to the Eighth District Court of Appeals.

Trial counsel provided ineffective assistance because he failed to object to improper, irrelevant evidence. Evid.R. 404(B) Once the series of questions began, defense counsel could have made an objection to the line of questioning before any unfair prejudicial testimony was presented. Again, appellate counsel was ineffective failing to preserve this issue for review on direct appeal.

[1]-Counsel provided ineffective assistance because he failed to object to improper, irrelevant Evid. R. 404(B) evidence. Once the series of questions began, defense counsel could have made an objection to the line of questioning before any unfair prejudicial testimony was presented;

[2]-Counsel should have moved for a mistrial because the prejudicial testimony was directly related to the offense charged and the witness's subsequent testimony and opinion concerning the appellant's guilt was more than sufficient for defense counsel to request a mistrial. Failure to request a mistrial or curative instruction may be deficient performance of trial counsel.

A defendant's constitutional right to be tried by an impartial jury of the county in which the offense is alleged to have been committed. Crim. R. 18(B) authorize a court to sua sponte change venue when it appears that a fair and impartial trial cannot be held where the action is pending. State v. Bridges, Eighth Judicial District of Ohio Cuyahoga, County - C.A. No.100805 Accordingly, this Honorable Court Supreme Court should sustain this appellant's assignment of error or here it on it's merits.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW NO. 4 The appellant was deprived the effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution when Appellant counsel failed to object to the admission of highly prejudicial evidence pursuant Evid. R.403.

HOLDINGS: [1]-The admission of the alleged statements of Jason Quinones through the testimony of an investigating officer violated the defendant's right to confront the witnesses against him, under United States Constitution Amendment VI and XIV and Ohio Constitution Article I, §10, because the statements were unfairly prejudicial under Evid. R. 403 and the non-hearsay reason given for introducing the statements was a pretext for the real reason: connecting defendant to the crime. The out-of-court statements were exceptionally damaging because the declarant spoke of another suspect in the murder and much of the evidence introduced by the State tied that suspect to the crime; [2]-The closing argument demonstrated that the Andrey Bridges Jr. statements were not offered to explain police investigatory conduct and his innocence, but to tie the appellant to the murder. See, e.g., *State v. Ricks*, 196 Ohio App. 3d 798, 2011 Ohio 5043, 965 N.E.2d 1018, 2011 Ohio App. LEXIS 4157 (Ohio Ct. App., Erie County, 2011). How did this Mr. Quinones testimony prejudice the appellant Bridges?

There was the risk that the jury prejudicially misused the content of his testimony for its truth, therefore this exceeded the probative value of the statements.

Although a consideration of possible prejudice is involved, the probative value of the statements was substantially outweighed by the danger of unfair prejudice; and the statements connect Bridges with the crime charged. A constitutional error can be held harmless if an appellate court determine that it was harmless beyond a reasonable doubt. Whether a Sixth Amendment error was harmless beyond a reasonable doubt is not simply an inquiry into the sufficiency of the remaining evidence. Instead, the question is whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction. Similarly here, *[State v.] Blanton* [184 Ohio App.3d 611, 2009-Ohio-5334, 921 N.E.2d 1103 (10th Dist.)] Accordingly, this Honorable Court Supreme Court should sustain this appellant's assignment of error or here it on it's merits.

CONCLUSION

This case involves substantial constitutional questions, as well as questions of public or great general interest. The Appellant respectfully submits that Supreme Court Review is necessary to address the recent rash of Eighth District decisions affording no deference to the trier-of-fact's decision and conducting a de novo review to apply those inferences it finds most persuasive. "The cumulative effect of evidentiary errors that pervaded this trial deprived appellant of a reliable trial and fair sentencing determination in violation of his rights guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 2, 9, 10, 16 of the Ohio Constitution." The Appellant therefore submits that this case is worthy of Supreme Court review and respectfully requests that this Honorable Court either summarily reverse the Eighth District's decision, or to accept jurisdiction to hear this case on its merits.

I pray to the Ohio Supreme Court to (1) Take a closer look at all the evidence in this case. (2) Review all of the amicus briefs filed by the appellant regarding this case and the issues presented, and (3) To do a thorough investigation of the events that transpired to the conviction, and decide the constitutional claims that is of great public interest and has great constitutional questions regarding this case at bar.

Sincerely submitted,

Andrey L. Bridges
ANDREY L. BRIDGES - #650-493
501 THOMPSON RD
CONNEAUT, OHIO 44030

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT ANDREY L. BRIDGES, has been sent by U.S. Mail, first-class postage prepaid, to the Cuyahoga County Prosecutor, 1200 Ontario Street Cleveland, Ohio 44113, on this 29 day of APRIL 2015

Andrey L. Bridges - #650-493

APPENDIX

Journal Entry Opinion of the Cuyahoga County Court of Appeals
(April 14th,2015)

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Nailah K. Byrd, Clerk of Courts

STATE OF OHIO

Appellee

COA NO.
100805

LOWER COURT NO.
CR-13-574201-A

-vs-

COMMON PLEAS COURT

ANDREY BRIDGES

Appellant

MOTION NO. 479829

Date 04/14/15

Journal Entry

Motion by appellant, pro se, for reopening is denied.

FILED AND JOURNALIZED
PER APP.R. 22(C)

APR 14 2015

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By M. Jacobs Deputy

Adm. Judge, FRANK D. CELEBREZZE, JR.,
Concurs

Judge LARRY A. JONES, SR., Concurs


MARY J. BOYLE
Judge

CA13100805

88801866



NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 100805

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANDREY BRIDGES

DEFENDANT-APPELLANT

**JUDGMENT:
APPLICATION DENIED**

Cuyahoga County Court of Common Pleas
Case No. CR-13-574201-A
Application for Reopening
Motion No. 479829

RELEASE DATE: April 14, 2015

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

FOR APPELLANT

Andrey L. Bridges, pro se
Inmate No. 650-493
P.O. Box 8000
Lake Erie Correctional Institution
Conneaut, Ohio 44030

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
By: John Patrick Colan
 Brian R. Radigan
 Brett Hammond
Assistant County Prosecutors
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶1} Andrey Bridges has filed a timely application for reopening pursuant to App.R. 26(B) relating to *State v. Bridges*, 8th Dist. Cuyahoga No. 100805, 2014-Ohio-4570, which affirmed his convictions for murder, felonious assault, tampering with evidence, and abuse of a corpse.¹ The state has opposed the application for reopening, and Bridges has filed a reply brief. For the following reasons, we deny the application for reopening.

{¶2} In order to establish a claim of ineffective assistance of appellate counsel, Bridges must demonstrate that appellate counsel's performance was deficient and that, but for the deficient performance, the result of his appeal would have been different. *State v. Reed*, 74 Ohio St.3d 534, 1996-Ohio-21, 660 N.E.2d 456. Specifically, Bridges must establish that "there is a genuine issue as to whether he was deprived of the effective assistance of counsel on appeal." App.R. 26(B)(5).

{¶3} In *State v. Smith*, 95 Ohio St.3d 127, 2002-Ohio-1753, 766 N.E.2d 588, the Supreme Court of Ohio held that:

Moreover, to justify reopening his appeal, [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 at 25, 1998-Ohio-704, 701 N.E.2d 696.

¹The convictions for murder and felonious assault were merged as being allied offenses of similar import.

Smith, supra, at 7.

{¶4} In addition, the Supreme Court of Ohio, in *State v. Spivey*, 84 Ohio St.3d 24, 1998-Ohio-704, 701 N.E.2d 696, held that:

In *State v. Reed* (1996), 74 Ohio St.3d 534, 535, 1996 Ohio 21, 660 N.E.2d 456, 458, we held that the two prong analysis found in *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 674, is the appropriate standard to assess a defense request for reopening under App.R. 26(B)(5). [Applicant] must prove that his counsel were deficient for failing to raise the issues he now presents, as well as showing that had he presented those claims on appeal, there was a "reasonable probability" that he would have been successful. Thus [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.

Id.

{¶5} It is also well settled that appellate counsel is not required to raise and argue assignments of error that are meritless. *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). Appellate counsel cannot be considered ineffective for failing to raise every conceivable assignment of error on appeal. *Jones, supra*, at 752; *State v. Gumm*, 73 Ohio St.3d 413, 1995-Ohio-24, 653 N.E.2d 253; *State v. Campbell*, 69 Ohio St.3d 38, 1994-Ohio-492, 630 N.E.2d 339.

{¶6} In *Strickland*, the United States Supreme Court also stated that a court's scrutiny of an attorney's work must be deferential. The court further stated that it is too tempting for a defendant-appellant to second-guess his attorney after conviction and appeal and that it would be all too easy for a court

to conclude that a specific act or omission was deficient, especially when examining the matter in hindsight. Accordingly, “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.” *Id.* at 689. Finally, the United States Supreme Court has firmly established that appellate counsel possesses the sound discretion to decide which issues are the most fruitful arguments on appeal. Appellate counsel possesses the sound discretion to winnow out weaker arguments on appeal and to focus on one central issue or at most a few key issues. *Jones, supra*, at 752.

{¶7} Bridges’s application sets forth four assigned errors in which he alleges that his appellate counsel was ineffective. Under the first assigned error in his application, Bridges simply summarizes the three assigned errors that follow it, which does not satisfy the burden for reopening. *See State v. Reeves*, 8th Dist. Cuyahoga No. 100560, 2015-Ohio-299, ¶ 6 (the failure to present any argument in support of an assigned error is insufficient to meet the burden of proving that appellate counsel was ineffective). In his reply brief, Bridges similarly sets forth numerous generalized ways in which he believes his appellate counsel was ineffective in connection with his first assigned error; however, he does not develop any arguments as to how he was prejudiced by these alleged deficiencies. For example, he contends his appellate counsel

should have highlighted inconsistencies in the statements Quinones made to police compared to his trial testimony. Yet, appellate counsel expressly argued that the convictions were against the manifest weight of the evidence because Quinones's testimony was not credible. This court reviewed the entire record, including the credibility of Quinones's testimony, and found that the circumstantial evidence against Bridges was overwhelming. Bridges did not point to any specific inconsistencies that he believes should have been highlighted, and he has not explained how the outcome of the decision could have been different where the entire record was already considered by this court. *Bridges*, 8th Dist. Cuyahoga No. 100805, 2014-Ohio-4570, ¶ 83.

{¶8} Bridges claims his appellate counsel should have also raised the following arguments on appeal: that there was an actual conflict between himself and his trial counsel, that trial counsel failed to secure needed experts, that trial counsel failed to object to improper and prejudicial prosecutorial remarks, that trial counsel failed to subpoena his son to testify and that counsel should have moved the court to issue a gag order "to prevent the newspaper from reporting the proceedings and/or criminal background of Bridges to the public." Bridges has not cited to any specific prosecutorial remarks he believes were improper or prejudicial. Further, many of the foregoing arguments require reference to material that is outside the trial court record and would be improper for appellate counsel to raise in the direct appeal.

{¶9} It is well settled that “appellate review is strictly limited to the record.” *State v. Ellis*, 8th Dist. Cuyahoga No. 90844, 2009-Ohio-4359, ¶ 6, citing *The Warder, Bushnell & Glessner Co. v. Jacobs*, 58 Ohio St. 77, 50 N.E. 97 (1898) (other citations omitted); *State v. Corbin*, 8th Dist. Cuyahoga No. 82266, 2005-Ohio-4119, ¶ 7. A reviewing court cannot add material to the appellate record and then decide the appeal on the basis of the new material. *Id.*, citing *State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978). “Nor can the effectiveness of appellate counsel be judged by adding new matter to the record and then arguing that counsel should have raised these new issues revealed by the newly added material.” *State v. Moore*, 93 Ohio St.3d 649, 650, 2001-Ohio-189, 758 N.E.2d 1130.

{¶10} Bridges has also failed to demonstrate any prejudice stemming from the alleged deficiencies. The first assigned error does not provide grounds for reopening the appeal pursuant to App.R. 26(B).

{¶11} In his second assignment of error, Bridges maintains that his appellate counsel should have asserted that the trial court erred by allowing media coverage of his case or his counsel should have moved for a change in venue. Bridges generally asserts that the publicity deprived him of an impartial jury but he has not identified any factual basis in the record that would support this claim. It is within the court’s discretion whether to grant or deny a motion for change of venue. *State v. Thompson*, 141 Ohio St.3d 254, 2014-Ohio-4751,

23 N.E.3d 1096, ¶ 91. Bridges cannot establish that the trial court would have granted a motion for change of venue even if trial counsel had filed one. In order “to prove that a trial court erred by denying a change of venue, a defendant must show that at least one prospective juror was actually biased.” *Id.* at ¶ 95. Bridges has not identified any specific juror that he claims was actually biased. “[I]n certain rare cases, pretrial publicity is so damaging that courts must presume prejudice even without a showing of actual bias.” *Id.* at ¶ 100. A claim of presumed prejudice requires Bridges to make a clear and manifest showing of pervasive and prejudicial pretrial publicity. *Id.* at ¶ 101. There is no reasonable probability that appellate counsel would have prevailed on a claim of presumed prejudice based on this record. During voir dire, some jurors indicated that they had been exposed to some media coverage of the case. Each juror was separately questioned about their media exposure. In most instances, the juror’s knowledge was very limited and consisted only of hearing that the body of a transgender individual had been found in a pond in Olmsted Township. None of the jurors reported having any knowledge of Bridges or his criminal history. None of the jurors had formed any opinion regarding Bridges’s culpability. All of the jurors indicated that they could be fair and impartial and that they could set aside anything that they had learned from the pretrial publicity.

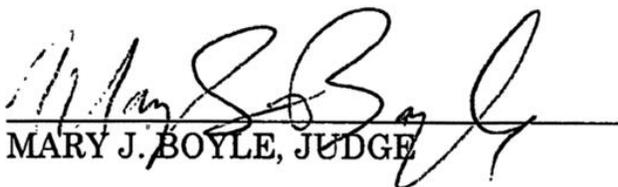
{¶12} There is no indication that Bridges received an unfair trial based on publicity. The second assigned error does not provide grounds for reopening the appeal.

{¶13} In his third assigned error, Bridges maintains that appellate counsel should have argued that trial counsel was ineffective in the following ways: failure to investigate the case, failure to consult with the client to prepare the case, failure to file a suppression motion and a “motion for in camera inspection,” failure to move for a private investigator prior to trial, and failure to file a notice of alibi. In his reply brief, Bridges contends that his trial counsel’s alleged failure to timely investigate the case and to present relevant evidence affected a substantial right and prejudiced him. Appellate counsel could not have successfully raised any of these arguments in the direct appeal because they would require speculation or consideration of evidence that is outside of the record. *Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500; *State v. Bays*, 87 Ohio St.3d 15, 28, 1999-Ohio-216, 716 N.E.2d 1126 (prejudice from counsel’s failure to employ investigative services is speculative where the record does not disclose what investigations trial counsel had performed or what information an investigator might have “turned up or that defense counsel in fact failed to obtain”). Accordingly, the third assigned error does not establish a colorable claim of ineffective assistance of appellate counsel for purposes of reopening the appeal.

{¶14} In his application, Bridges appears to be arguing under his fourth assigned error that his appellate counsel should have presented an ineffective assistance of trial counsel argument based on the failure to file a motion to suppress. Bridges failed in his application to identify the specific testimony or evidence that he believes was improperly admitted. In his reply brief, Bridges refers to “the admission of the alleged statements of Jason Quinones through the testimony of an investigating officer violated his right to confront witnesses against him * * *.” However, Quinones was subject to cross-examination at trial. In any case, Bridges has failed to direct this court to any portion of the record or trial where he contends his trial counsel should have objected to the admission of evidence or where any specific testimony or evidence was improperly introduced to his prejudice. Accordingly, he has failed to demonstrate any genuine issue of ineffective assistance of appellate counsel based on the fourth assigned error.

{¶15} Bridges has not met the standard for reopening pursuant to App.R. 26(B).

{¶16} Accordingly, his application for reopening is denied.


MARY J. BOYLE, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
LARRY A. JONES, SR., J., CONCUR

FILED AND JOURNALIZED
PER APP.R. 22(C)

APR 1 4 2015

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