

COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT,
CUYAHOGA COUNTY

State v. Silver

2025-Ohio-5509 (8th Dist.) · No. No. 114499 · Decided December 9, 2025

SUMMARY

The Eighth District Court of Appeals of Ohio denied Terrell Silver’s application under Ohio Appellate Rule 26(B) to reopen his prior appeal. The court held that Silver failed to identify assignments of error as required and that his claims concerning capital-case procedures were baseless because the indictment did not include capital specifications under Ohio Revised Code 2929.04(A).

CASE DETAILS

COURT	Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County
WRITING FOR THE COURT	Sean C. Gallagher, J.; Michelle J. Sheehan, P.J.; Kathleen Ann Keough, J.
JURISDICTION	Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County
DECIDED	December 9, 2025
DOCKET	No. 114499
DISPOSITION	other
PROCEDURAL POSTURE	Defendant applied under Ohio Appellate Rule 26(B) to reopen the appellate judgment affirming his criminal convictions, alleging ineffective assistance of appellate counsel.
STANDARD OF REVIEW	An App.R. 26(B) applicant must demonstrate deficient performance by appellate counsel and resulting prejudice under Strickland v. Washington. The application must also identify one or more assignments of error not raised in the original appeal under App.R. 26(B)(2)(c).
PRECEDENTIAL VALUE	Published opinion
PARTIES	Terrell Silver v. State of Ohio

TOPICS

- appellate procedure
- ineffective assistance
- criminal procedure
- post-conviction relief
- sentencing

PRACTICE AREAS

criminal procedure

appellate procedure

post-conviction relief

ineffective assistance

QUESTIONS PRESENTED

1. Whether Silver satisfied App.R. 26(B)(2)(c) by identifying one or more assignments of error that appellate counsel failed to raise in the original appeal.
2. Whether appellate counsel was ineffective for failing to argue that Silver's aggravated-murder prosecution was a capital case requiring capital venire, jury-instruction, and sentencing procedures.
3. Whether the absence of capital specifications under R.C. 2929.04(A) meant that Silver's case was not a capital case.

HOLDINGS

1. An App.R. 26(B) application may be denied when the applicant fails to identify any assignment of error that was not raised in the original appeal.
2. Appellate counsel was not ineffective for declining to raise claims that a capital-case venire, sentencing instructions, and jury sentencing were required when the indictment did not contain the capital specifications required by R.C. 2929.04(A).

FACTUAL BACKGROUND

Evidence at trial showed that Silver murdered four individuals and the unborn child of one of them in an abandoned house. He was indicted on numerous aggravated-murder and other charges, but the indictments did not include the capital specifications required under R.C. 2929.04(A). The trial court imposed an aggregate sentence of 30.5 years consecutive to five consecutive life sentences without parole. On appeal, counsel raised sufficiency, manifest-weight, hearsay, ineffective-assistance-of-trial-counsel, and evidentiary issues, but did not argue that capital-case procedures were required.

PROCEDURAL HISTORY

Silver was convicted in the Cuyahoga County Court of Common Pleas of multiple aggravated-murder and other offenses and received an aggregate sentence of 30.5 years consecutive to five consecutive life sentences without parole. The Eighth District affirmed his convictions in *State v. Silver*, 2025-Ohio-2771 (8th Dist.). Silver then filed an App.R. 26(B) application alleging that appellate counsel should have argued that capital-case procedures were required and had not been followed. The State opposed the application, and the court denied reopening.

DISPOSITION

other

CASES CITED

- *State v. Silver*, 2025-Ohio-2771 (8th Dist.)
- *Strickland v. Washington*, 466 U.S. 668 (1984)

- State v. Bradley, 42 Ohio St.3d 136 (1989)
- State v. Reed, 1996-Ohio-21
- State v. Bonneau, 2013-Ohio-696 (8th Dist.)

OPINION

PER CURIAM.

[Cite as State v. Silver, 2025-Ohio-5509.] COURT OF APPEALS OF OHIO EIGHTH APPELLATE DISTRICT COUNTY OF CUYAHOGA STATE OF OHIO,; Plaintiff-Appellee,; No. 114499 v.: TERRELL SILVER,; Defendant-Appellant. JOURNAL ENTRY AND OPINION JUDGMENT: APPLICATION DENIED RELEASED AND JOURNALIZED: December 9, 2025 Criminal Appeal from the Cuyahoga County Court of Common Pleas Case No. CR-23-680442-A Application for Reopening Motion No. 588650 Appearances: Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Matthew W. Moretto, Assistant Prosecuting Attorney, for appellee.

Terrell Silver, pro se. SEAN C. GALLAGHER, J.: On October 7, 2025, the applicant, Terrell Silver, applied pursuant to App.R. 26(B), to reopen this court's judgment in State v. Silver, 2025-Ohio-2771 (8th Dist.), in which this court affirmed his convictions for seven counts of aggravated murder, four counts of murder, five counts of felonious assault, one count of aggravated burglary, one count of attempted murder, and two counts of having weapons while under disability.

The gravamen of Silver's application is that his appellate counsel did not argue that the procedures for a death penalty case were not followed. On November 4, 2025, the State of Ohio filed its brief in opposition. For the following reasons, this court denies the application to reopen. FACTUAL AND PROCEDURAL BACKGROUND The evidence at trial showed that Silver murdered four individuals and the unborn child of one of those individuals in an abandoned house.

From this incident, the grand jury indicted him for 15 counts of aggravated murder. These counts contained one- and three-year firearm specifications and a 54-month firearm specification. Each of these indictments included the language: "The State of Ohio reserves the right to seek a superseding indictment containing the appropriate 2929.04(A) Aggravating Circumstance(s)/Specifications." The indictment also included one count of aggravated burglary, four counts of murder, four counts of felonious assault, one count of aggravated robbery, one count of tampering with evidence, and one count of having a weapon while under disability.

In a separate incident he was indicted for attempted murder, felonious assault, and having a weapon while under disability. He was convicted of the counts as mentioned above, and the trial court imposed an aggregate sentence of 30.5 years consecutive to five consecutive life sentences without the possibility of parole. Silver's appellate counsel argued that there was insufficient evidence to support the verdicts, that the verdicts were against the manifest weight of the evidence,

that the trial court erred in allowing hearsay evidence, that trial counsel was ineffective for not moving for a mistrial because of the hearsay evidence, and that the trial court erred in admitting prejudicial, gruesome crime scene and autopsy photographs into evidence.

Silver now alleges that his appellate counsel was ineffective. **LEGAL ANALYSIS** 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 (1984); *State v. Bradley*, 42 Ohio St.3d 136 (1989); and *State v. Reed*, 1996-Ohio-21.

Additionally, App.R. 26(B)(2)(c) requires the applicant to argue one or more assignments of error that were not argued in the original appeal. Silver fails to state any assignments of error. This is sufficient reason to deny his application. *State v. Bonneau*, 2013-Ohio-696 (8th Dist.). Nevertheless, a review of Silver's application shows that he is arguing that his aggravated murder case was a capital case and the procedures for a capital case were not followed, specifically that the venire was not conducted as a capital venire and the jury was not instructed on sentencing and was not allowed to sentence him.

However, these arguments are baseless. The necessary capital specifications under R.C. 2929.04(A) were not included in the indictment, and this was not a capital case. Appellate counsel properly declined to raise baseless assignments of error.

Accordingly, this court denies the application to reopen. _____ SEAN C. GALLAGHER, JUDGE MICHELLE J. SHEEHAN, P.J., and KATHLEEN ANN KEOUGH, J.,
CONCUR