

COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

ERIC R. ATKINSON

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. CT2019-0055

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Muskingum County  
Court of Common Pleas, Case No.  
CR2017-0410

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

May 21, 2020

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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*Hoffman, P.J.*

{¶1} Defendant-appellant Eric Atkinson appeals the June 4, 2019 Entry entered by the Muskingum County Court of Common Pleas, which denied his petition for post-conviction relief without conducting a hearing. Plaintiff-appellee is the state of Ohio.

#### STATEMENT OF THE FACTS AND CASE

{¶2} On October 29, 2017, Angelina Butler took her children trick or treating with her friend in her friend's neighborhood. Appellant is the father of Butler's children. Butler's friend lives near Appellant. As they walked past Appellant's residence, Appellant exited his home, wearing a mask to scare the children. Butler asked Appellant to stop and an argument ensued. Appellant pushed Butler, who responded by kicking him. In retaliation, Appellant punched her in the face, and then pushed her. Butler and her group returned to her friend's residence and called the Sherriff's office. Butler felt sick and began to vomit. While speaking with law enforcement, Butler lost consciousness. The officers proceeded to Appellant's residence. Appellant admitted assaulting Butler, but claimed it was in self-defense because she kicked him in the groin. As a result of the altercation, Butler had a concussion and pinched nerves. She underwent multiple surgeries to correct the damage Appellant caused.

{¶3} On November 1, 2017, the Muskingum County Grand Jury indicted Appellant on one count of felonious assault, in violation of R.C. 2903.11(A)(1), a felony of the second degree; one count of domestic violence (prior offense), in violation of 2919.25(A), a felony of the fourth degree; two counts of assault on a peace officer, in violation of R.C. 2903.13(A), felonies of the fourth degree; and one count of resisting arrest, in violation of R.C. 2921.33(B), a first degree misdemeanor.

{¶4} On January 11, 2018, Appellant pled guilty to felonious assault, domestic violence (prior offense) and resisting arrest. The State agreed to dismiss the two counts of assault on a peace officer. The trial court ordered a pre-sentence investigation report. On February 12, 2018, Appellant appeared before the trial court for sentencing. The trial court merged the felonious assault and domestic violence counts. The State elected to move forward on the felonious assault charge. Thereafter, the trial court sentenced Appellant to an aggregate prison term of eight years. Appellant appealed his sentence to this Court, which affirmed. *State v. Atkinson*, 5<sup>th</sup> Dist. Muskingum App. No. CT2018-0015, 2018-Ohio-4290. The Ohio Supreme Court subsequently denied Appellant's motion for leave to file a delayed appeal. *State v. Atkinson*, 154 Ohio St.3d 1510, 116 N.E.3d 1289, 2019-Ohio-601.

{¶5} On December 26, 2018, Appellant filed a pro se petition for post-conviction relief, seeking to have his conviction set aside. Appellant asserted two grounds in support of relief. First, Appellant claimed the State failed to provide medical records and medical statements in discovery. Appellant explained the discovery was necessary for him to properly defend himself against the felonious assault charge, which required proof of serious physical harm to another. Appellant also alleged the State failed to establish an essential element of the offense of domestic violence, to wit: the victim was a family or household member. Appellant also requested an evidentiary hearing. Appellant did not include any documentation in support of his petition. Appellant subsequently filed a motion to amend his petition to include a claim his sentence was disparate when compared to similarly situated defendants.

{¶1} Via Entry filed June 4, 2019, the trial court denied Appellant's petition. The trial court found Appellant failed to provide any evidence in support of his claims. The trial court further found the issues could have and should have been raised on direct appeal; therefore, were barred by the doctrine of res judicata. The trial court also denied Appellant's request for a hearing.

{¶2} It is from this entry Appellant appeals, assigning as error:

THE TRIAL COURT ERRED BY DENYING ATKINSON'S PETITION  
FOR POST-CONVICTION RELIEF WITHOUT A HEARING.

{¶3} The post-conviction relief process is a collateral civil attack on a criminal judgment, rather than an appeal of the judgment. *State v. Calhoun*, 86 Ohio St.3d 279, 281, 714 N.E.2d 905 (1999). The post-conviction relief proceeding is designed to determine whether "there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States." R.C. 2953.21(A)(1)(a). Post-conviction review is not a constitutional right. Rather, it is a narrow remedy which gives the petitioner no more rights than those granted by statute. *Id.* It is a means to resolve constitutional claims which would otherwise be impossible to reach because the evidence supporting those issues is not contained in the record of the petitioner's criminal conviction. *State v. Zich*, 6th Dist. Lucas No. L-15-1263, 2017-Ohio-414, ¶ 9.

{¶4} A trial court's decision to grant or deny a post-conviction petition filed pursuant to R.C. 2953.21 should be upheld absent an abuse of discretion; a reviewing

court should not overrule the trial court's finding on a petition for post-conviction relief if it is supported by competent and credible evidence. *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 58. “Abuse of discretion” connotes more than a mere error of law or judgment, instead requiring a finding the trial court’s decision was unreasonable, arbitrary, or unconscionable. *Darby v. A-Best Prod. Co.*, 102 Ohio St.3d 410, 2004-Ohio-3720, 811 N.E.2d 1117, ¶ 13.

**{¶5}** A criminal defendant seeking to challenge a conviction through a petition for post-conviction relief is not automatically entitled to an evidentiary hearing. *Calhoun*, supra at 282, citing *State v. Cole*, 2 Ohio St.3d 112, 443 N.E.2d 169 (1982). Before granting an evidentiary hearing, the trial court must determine whether substantive grounds for relief exist. R.C. 2953.21(D). In making such a determination, the court shall consider the petition, supporting affidavits, documentary evidence, and all the files and records from the case. *Calhoun*, supra at 284.

**{¶6}** “Substantive grounds for relief exist and a hearing is warranted if the petitioner produces sufficient credible evidence that demonstrates the petitioner suffered a violation of the petitioner’s constitutional rights.” *In re B.C.S.*, 4th Dist. No. 07CA60, 2008-Ohio-5771, ¶ 11. The petitioner must demonstrate the claimed “errors resulted in prejudice.” *Calhoun*, supra at 283. A court may dismiss a petition for post-conviction relief without a hearing when the petitioner fails to submit evidentiary material “demonstrat[ing] that petitioner set forth sufficient operative facts to establish substantive grounds for relief.” *Id.* at paragraph two of the syllabus.

**{¶7}** A trial court may also dismiss a petition for post-conviction relief without holding a hearing when the doctrine of res judicata bars the claims raised in the petition.

*State v. Szefcyk*, 77 Ohio St.3d 93, 671 N.E.2d 233. Under the doctrine of res judicata, a defendant who was represented by counsel is barred from raising an issue in a petition for post-conviction relief if the defendant raised or could have raised the issue at trial or on direct appeal. *Id.* at 95. “Res judicata is applicable in all post-conviction relief proceedings.” *Id.*

{¶18} Appellant maintains the trial court abused its discretion in denying his petition for post-conviction relief on res judicata grounds. Appellant explains the doctrine of res judicata does not apply to bar the claim he raised in his petition for post-conviction relief as his “claim relies on information outside of the record and could not have been relied upon on direct appeal.” Brief of Appellant at 3-4. Appellant continues, he “could not have raised the discovery issue on direct appeal because it pertained to evidence outside of the record. That evidence outside of the record is the discovery not provided during pre-trial proceedings.” *Id.* at 4.

{¶19} On December 26, 2018, Appellant filed a pro se Petition to Vacate or Set Aside Judgment of Conviction or Sentence. Therein, Appellant asserted he was entitled to relief because the State failed to provide him with evidence favorable to his defense and failed to establish an essential element of the offense of domestic violence. Appellant amended his petition, alleging his sentence was disparate when compared to similarly situated defendants.

{¶10} We agree with Appellant “[a]n exception to the *res judicata* bar is when the petitioner presents competent, relevant, and material evidence outside the record that was not in existence and available to the petitioner in time to support the direct appeal”. *State v. Watson*, 126 Ohio App.3d 316, 324-325, 710 N.E.2d 340 (3d Dist.1998).

{¶11} However, in its June 4, 2019 Entry, the trial court set forth two grounds upon which it based its denial of Appellant's petition. First, the trial court found "[Appellant] failed to provide any evidence to support his claims." The trial court further found the "issues could have, and should have been raised on direct appeal, and therefore, he is barred by the doctrine of *res judicata* from raising them in a post-conviction relief petition." June 4, 2019 Entry.

{¶12} The trial court correctly found Appellant's argument challenging the sufficiency of the State's evidence to establish the victim was a family or household member was barred by *res judicata* as the issue could have been raised on direct appeal.<sup>1</sup>

{¶13} We do agree with Appellant his claim the State withheld exculpatory medical evidence (an alleged *Brady* violation) depends on evidence outside the original appellate record and would not be barred by *res judicata*.<sup>2</sup>

{¶14} However, we agree with the trial court Appellant failed to provide any evidence to support his *Brady* violation claim. Appellant's mere conclusory opinion was not supportive by any affidavit(s) or other medical evidence. Based upon the record before the trial court concerning the extent of the victim's injuries, which resulted in her undergoing multiple surgeries, we find the trial court did not abuse its discretion in denying Appellant's petition without a hearing for this independent reason.

{¶15} "[A] reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as a basis thereof." *State ex rel. Peeples v. Anderson*, 73 Ohio St.3d 559, 560, 653 N.E.2d 371, 373(1995); *State ex rel. Cassels v.*

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<sup>1</sup> Had the issue been raised on direct appeal, such argument would have been overruled as it had not been preserved for appellate review because of Appellant's guilty plea.

<sup>2</sup> In his Brief to this Court, Appellant does not assert error in the trial court's ruling on his amended claim of disparate or vindictive sentencing.

*Dayton City School Dist. Bd. Of Edn.*, 69 Ohio St.3d 217, 222, 631 N.E.2d 150(1998).  
*Accord, State ex rel. v. McGinty v. Cleveland City School Dist. Bd. Of Edn.*, 81 Ohio 283,  
290, 1998-Ohio-471, 690 N.E.2d 1273(1998). A fundamental tenet of appellate review is  
“[r]eviewing courts affirm and reverse judgments, not reasons.” *State v. Eschenauer*, 11th  
Dist. Lake No. 12–237, 1988 WL 121296, 4 (Nov. 10, 1988); *Mizer v. Smith*, 5th Dist.  
Licking No. 09–CA–00026, 2009-Ohio-6820, 2009 WL 4985243, ¶ 20

**{¶16}** “[I]t is the definitely established law of this state that where the judgment is  
correct, a reviewing court is not authorized to reverse such judgment merely because  
erroneous reasons were assigned as the basis thereof.” *Agricultural Ins. Co. v.*  
*Constantine*, 144 Ohio St. 275, 284, 58 N.E.2d 658 (1944); *State ex rel. Cassels v. Dayton*  
*City School Dist. Bd. of Edn.*, 69 Ohio St.3d 217, 222, 631 N.E.2d 150 (1994).

**{¶17}** Based on the foregoing, we find the trial court did not abuse its discretion in  
denying Appellant’s request for an evidentiary hearing and denying his petition for post-  
conviction relief.



{¶18} Appellant's sole assignment of error is overruled.

{¶19} The judgment of the Muskingum County Court of Appeals is affirmed.

By: Hoffman, P.J.

Wise, John, J. and

Delaney, J. concur

