

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 107957
	:	
v.	:	
	:	
LELAND WOODS,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: June 6, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-02-429282-ZA

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Frank Romeo Zeleznikar, Assistant Prosecuting Attorney, *for appellee*.

Leland Woods, *pro se*.

RAYMOND C. HEADEN, J.:

{¶ 1} Defendant-appellant, Leland Woods (“Woods”), appeals pro se from the trial court’s order denying his motion to correct sentence. For the reasons that follow, we affirm.

Statement of the Facts

{¶ 2} After a jury trial, Woods was convicted in 2003 of one count of rape, eight counts of gross sexual imposition, and one count of kidnapping a child who was under the age of 13 at the time of the offenses. The trial court sentenced him to life in prison for the rape; two years incarceration on each of the gross sexual imposition counts, to run concurrent with each other; and three years for the kidnapping, to run consecutive to the sentence imposed on the gross sexual imposition counts. The trial court did not advise Woods of postrelease control at sentencing nor did it include postrelease control in the sentencing entry.

{¶ 3} Woods appealed his conviction and sentence, which this court affirmed in *State v. Woods*, 8th Dist. Cuyahoga No. 82789, 2004-Ohio-2700. The Ohio Supreme Court subsequently denied Woods's motion to file a delayed appeal. *State v. Woods*, 104 Ohio St.3d 1407, 2004-Ohio-6364, 818 N.E.2d 709.

{¶ 4} In September 2010, Woods filed a motion to vacate his sentence, contending that the sentence was void because the trial court had not imposed postrelease control. The trial court subsequently held a resentencing hearing at which it reimposed the original sentence and, recognizing that the sentences for gross sexual imposition and kidnapping had expired, imposed a mandatory five-year term of postrelease control on the rape charge only. We affirmed that decision in *State v. Woods*, 8th Dist. Cuyahoga No. 96487, 2011-Ohio-5825.

{¶ 5} On October 8, 2014, Woods filed a motion to correct/revise judgment challenging the court's authority to impose a life sentence for rape. That motion was

denied on November 6, 2014. Woods filed a motion on December 9, 2014, challenging the verdict forms. The trial court denied the motion on August 18, 2015. A motion to void sentence filed on June 12, 2017, alleged the convicted offenses were allied offenses. The trial court denied the motion to void sentence on June 16, 2017. On September 11, 2018, Woods filed a motion to vacate sentence because his sentence was imposed under the allegedly unconstitutional statutes R.C. 2929.14, 2929.19, and 2929.41. That motion was denied on September 17, 2018.

{¶ 6} On October 30, 2018, Woods filed a motion to correct sentence requesting the court to vacate the original March 31, 2003 sentence. Woods again argued his prior sentence should be remanded for resentencing because the 2003 sentence was based upon R.C. 2929.19, an unconstitutional statute. A journal entry dated November 1, 2018, denied Woods's motion, and he filed this timely appeal on December 5, 2018. Woods presents the following assignment of error: "The Defendant was denied due process when the court sentenced the defendant pursuant to statutes [sic] held to be unconstitutional."

Law and Analysis

{¶ 7} Woods argues he was denied due process when the court sentenced him under statutes R.C. 2929.14(B), (C), and (E)(4), 2929.19(B)(2), and 2929.41(A) that were subsequently held unconstitutional in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. Because the statutes were unconstitutional, Woods claims his sentence is void and should be vacated and remanded.

{¶ 8} Woods’s motion to correct sentence, despite its caption, meets the definition of a motion for postconviction relief set forth in R.C. 2953.21(A)(1). A motion for postconviction relief under R.C. 2953.21(A)(1) is a motion that (1) was filed subsequent to Woods’s direct appeal, (2) claimed a denial of constitutional rights, (3) sought to render the judgment void, and (4) asked for vacation of the judgment and sentence. *State v. Reynolds*, 79 Ohio St.3d 158, 160, 1997-Ohio-304, 679 N.E.2d 1131. Woods’s motion meets all these parameters, and we will construe Woods’s motion on appeal as a motion for postconviction relief. *See also State v. Meincke*, 8th Dist. Cuyahoga No. 96407, 2011-Ohio-6473, ¶ 5.

{¶ 9} A trial court may dismiss a petition on the basis of res judicata if an issue was or should have been raised on direct appeal. *State v. Jackson*, 8th Dist. Cuyahoga No. 104132, 2017-Ohio-2651, ¶ 53. The constitutionality of the statutes discussed in *Foster, supra*, and that are currently challenged by Woods, could have been raised on Woods’s direct appeal. *State v. Randlett*, 10th Dist. Franklin Nos. 06AP-1073, 06AP-1074, 06AP-1075 and 06AP-1076, 2007-Ohio-3546, ¶ 26. Accordingly, Woods’s motion for postconviction relief is barred by res judicata.

{¶ 10} Additionally, a postconviction motion must be filed within 180 days from the filing of the trial transcript in the petitioner’s direct appeal. R.C. 2953.21. The current motion was filed outside that timeframe and, therefore, is considered untimely. “Generally, [a] trial court has no jurisdiction to consider an untimely petition for postconviction relief.” *Meincke* at ¶ 11. A trial court may, however, entertain untimely petitions for postconviction relief if the defendant demonstrates

either (1) he was unavoidably prevented from discovering facts necessary for the claim for relief, or (2) the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in defendant's situation. R.C. 2953.23(A)(1)(a). Neither of these exceptions have been argued nor apply to the instant case. Therefore, the trial court was without jurisdiction to consider the motion and did not err by denying Woods's motion.

{¶ 11} We find no merit in Woods's claims and hereby overrule his assignment of error. The lower court did not err in denying Woods's motion to correct sentence.

{¶ 12} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

RAYMOND C. HEADEN, JUDGE

EILEEN T. GALLAGHER, P.J., and
MICHELLE J. SHEEHAN, J., CONCUR