

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 108152
	:	
v.	:	
	:	
JAMES A. AUSTIN,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: June 13, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-16-608502-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and John D.R. Kirkland and Mary M. Frey,
Assistant Prosecuting Attorneys, *for appellee*.

James A. Austin, *pro se*.

LARRY A. JONES, SR., J.:

{¶ 1} In June 2017, defendant-appellant James Austin (“Austin”) pleaded guilty to several crimes and was sentenced to an eight-year prison term. He filed a direct appeal. *State v. Austin*, 8th Dist. Cuyahoga No. 105981, 2019-Ohio-1983. The record in his direct appeal was filed on November 20, 2017.

{¶ 2} On November 13, 2018, Austin filed a petition to vacate or set aside judgment of conviction or sentence, that is, a petition for postconviction relief. In December 2018, the trial court dismissed the petition as untimely. Austin instituted the within appeal challenging that dismissal. The state concedes that, under R.C. 2953.21(A)(2), Austin had 365 filings days from the date that the record in his direct appeal was filed in this court to file his postconviction petition, and that he met that date. We agree with the state.

{¶ 3} R.C. 2953.21(A)(2) provides in relevant part that a postconviction petition “shall be filed no later than three hundred sixty-five days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication.” Austin filed his petition on November 13, 2018, which was within 365 days of when the transcript in his direct appeal was filed with this court, which was on November 20, 2017. The petition was therefore timely, and the trial court should have considered it on the substantive grounds.

{¶ 4} Judgment reversed; case remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee 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.**

LARRY A. JONES, SR., JUDGE

**ANITA LASTER MAYS, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR**