

THE STATE EX REL. ASHIPA, APPELLANT, v. KUBICKI, JUDGE, APPELLEE.

[Cite as *State ex rel. Ashipa v. Kubicki*, 114 Ohio St.3d 459, 2007-Ohio-4563.]

Writ of procedendo sought to compel trial court to issue findings of fact and conclusions of law — Court of appeals’ denial of writ affirmed.

(No. 2007-0597 — Submitted August 14, 2007 — Decided September 19, 2007.)

APPEAL from the Court of Appeals for Hamilton County,

No. C-070066.

Per Curiam.

{¶ 1} This is an appeal from a judgment dismissing an action for a writ of procedendo to compel a common pleas court judge to issue findings of fact and conclusions of law on his denial of a petition for postconviction relief based on untimeliness. Because the judge had no duty to do so, we affirm.

{¶ 2} Appellant, Oludayo Ashipa, filed a petition in the Hamilton County Court of Common Pleas for postconviction relief. Shortly thereafter, appellee, Judge Charles J. Kubicki Jr., denied the petition, holding “[It] is untimely and, even if it had been timely, raises issues that could have been raised during Ashipa’s direct appeal.”

{¶ 3} Ashipa then filed an action in the Court of Appeals for Hamilton County for a writ of procedendo to compel Judge Kubicki to issue findings of fact and conclusions of law supporting his denial of Ashipa’s petition for postconviction relief. Judge Kubicki filed a motion to dismiss. The court of appeals granted the motion and dismissed Ashipa’s procedendo action.

{¶ 4} We affirm the judgment of the court of appeals. “[A] trial court need not issue findings of fact and conclusions of law when it dismisses an untimely [postconviction-relief] petition.” *State ex rel. Kimbrough v. Greene*, 98

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Ohio St.3d 116, 2002-Ohio-7042, 781 N.E.2d 155, ¶ 6. “This rule applies even when the defendant * * * claims, under R.C. 2953.23, that he was unavoidably prevented from discovery of the facts to present his claim for post-conviction relief.” *State ex rel. Hach v. Summit Cty. Court of Common Pleas*, 102 Ohio St.3d 75, 2004-Ohio-1800, 806 N.E.2d 554, ¶ 9.

Judgment affirmed.

MOYER, C.J., PFEIFER, LUNDBERG STRATTON, O’CONNOR, O’DONNELL,
LANZINGER and CUPP, JJ., concur.

Oludayo Ashipa, pro se.
