

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

August 5, 2020

[Cite as *08/05/2020 Case Announcements #2, 2020-Ohio-3885.*]

APPEALS NOT ACCEPTED FOR REVIEW

2020-0531. State v. McFeeture.

Cuyahoga App. No. 108434, 2020-Ohio-801.

Donnelly, J., dissents, with an opinion.

DONNELLY, J., dissenting.

{¶ 1} Due process requires that Ohio’s statutes governing petitions for postconviction relief—R.C. 2953.21 et seq.—afford an individual challenging the validity of his or her conviction a meaningful way to do so. Specifically, those provisions require a hearing once a petitioner has made a cognizable claim arguing a constitutional error. *State v. Calhoun*, 86 Ohio St.3d 279, 282-283, 714 N.E.2d 905 (1999).

{¶ 2} In her petition for postconviction relief, appellant, Holly McFeeture, made a cognizable constitutional claim and supported her claim with newly discovered evidence—i.e., affidavits and letters asserting that the state had presented testimony at trial from a witness who the state had to have reasonably known was lying. Yet, nearly five years after the postconviction petition had been filed, the trial court dismissed it without conducting an evidentiary hearing, summarily finding that the evidence was neither credible nor material, and that the claim was barred under the doctrine of res judicata.

{¶ 3} Because the postconviction statutes have been consistently construed by Ohio’s courts in such a way that frustrates the ability to present cognizable constitutional challenges, such as that which occurred here, I would accept McFeeture’s jurisdictional appeal to consider whether

res judicata may be applied to a claim supported by newly discovered evidence—i.e., evidence that was not in the record until a postconviction petition has been filed and thus is unavailable for a court to review in a direct appeal.

{¶ 4} I dissent.
