[Cite as *State v. Young*, 2015-Ohio-774.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-140236 TRIAL NO. B-0701436
Respondent-Appellee,	:	
vs.	:	*O P I N I O N.*
AARON E. YOUNG,	:	
Petitioner-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: March 6, 2015

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Paula E. Adams*, Assistant Prosecuting Attorney, for Respondent-Appellee,

Aaron E. Young, pro se.

Please note: we have removed this case from the accelerated calendar.

DEWINE, Judge.

{¶1} Aaron E. Young appeals from the Hamilton County Common Pleas Court's judgment denying his petition for postconviction relief. We affirm the court's judgment.

{¶2} Mr. Young was convicted in 2010 upon guilty pleas to multiple counts of aggravated robbery and victim intimidation. We affirmed his convictions in his direct appeal. *See State v. Young*, 1st Dist. Hamilton No. C-100065 (Nov. 17, 2010), *appeal not accepted*, 134 Ohio St.3d 1486, 2013-Ohio-902, 984 N.E.2d 29.

{¶3} Mr. Young also sought relief from his convictions in a timely filed petition under R.C. 2953.21 for postconviction relief. We dismissed his initial appeal from the denial of his postconviction petition, because the common pleas court's entry denying relief did not include findings of fact and conclusions of law. *See State v. Young*, 1st Dist. Hamilton No. C-110274, 2012-Ohio-1732. Mr. Young then amended his petition, and the common pleas court entered findings of fact and conclusions of law and denied the petition as amended. This appeal followed.

The Appeal Was Timely

{¶4} We reject at the outset the state's suggestion in its brief that this appeal should be dismissed for lack of jurisdiction because Mr. Young filed his notice of appeal almost two years after the common pleas court had denied his amended postconviction petition. The proceedings upon an R.C. 2953.21 petition for postconviction relief are civil in nature and thus governed by the Ohio Rules of Appellate Procedure as they apply to a civil action. *State v. Nichols*, 11 Ohio St.3d 40, 463 N.E.2d 375 (1984), paragraph two of the syllabus. App.R. 4(A)(1) requires that a final order be appealed within 30 days of its entry. But "[i]n a civil case, if the clerk has not completed service

of the order within the three-day period prescribed in Civ.R. 58(B), the 30-day period[] * * * begin[s] to run on the date when the clerk actually completes service." App.R. 4(A)(3). Thus, regardless of whether an appellant actually knows that a judgment has been entered, the time for appealing that judgment begins to run only "upon service of notice of the judgment and notation of service on the docket by the clerk of courts." *Clermont Cty. Transp. Improvement Dist. v. Gator Milford, L.L.C.*, Slip Opinion No. 2015-Ohio-241, syllabus, overruling *State ex rel. Hughes v. Celeste*, 67 Ohio St.3d 429, 619 N.E.2d 412 (1993).

{¶5} The common pleas court entered judgment denying Mr. Young's amended postconviction petition on June 21, 2012. But the common pleas court did not direct service of notice of the judgment, as required by Civ.R. 58(B), and thus the clerk of courts did not "actually complete[] service" of notice of the judgment, as required by App.R. 4(A)(3). Therefore, the 30-day period for appealing that judgment has yet to begin to run, and this appeal must be said to have been timely filed.

Postconviction Relief Was Properly Denied

{¶6} Mr. Young advances three assignments of error challenging the denial of his postconviction petition. We find that each is without merit.

{¶7} Mr. Young was indicted on nine counts of aggravated robbery, nine counts of robbery, and three counts of intimidating a victim or witness. Before trial, he withdrew his not-guilty pleas and entered guilty pleas to the nine counts of aggravated robbery and a single count of victim intimidation, in exchange for the dismissal of the remaining counts. At the plea hearing, the trial court thoroughly reviewed with Mr. Young and his counsel the plea entry that Mr. Young had signed. The entry indicated the potential sentence that he faced for each offense and reflected no agreement

concerning the sentences to be imposed. The trial court accepted the pleas, found Mr. Young guilty, ordered a presentence-investigation report, and set the matter for sentencing, with no mention by Mr. Young, his counsel, or the assistant prosecuting attorney of an agreement concerning sentencing.

{¶8} At the sentencing hearing, the assistant prosecuting attorney requested "the maximum sentence [the court] can impose on this plea." This request prompted an exchange between the trial court and the assistant prosecuting attorney about whether, in the course of plea negotiations, Mr. Young had "been given some leeway" concerning sentencing. The assistant prosecuting attorney, without a word from Mr. Young or his counsel, ultimately agreed with the court's statement that there had been "[n]o promises[,] * * * [n]o commitment on sentencing at all."

{¶9} But after the court imposed consecutive sentences totaling 37 years, Mr. Young asked to address the court. He asserted that he had "signed an open plea deal [for] 12 to 20 years." The court responded, "Not with me you didn't," while defense counsel contributed only the enigmatic remark, "And that was the agreement." When Mr. Young again asserted his "understanding [that he] was to sign a 12 to 20 open plea deal," the court ended the discussion with the statement, "[T]his was not a plea deal that you plead to."

{¶10} In his postconviction petition, Mr. Young sought relief from his convictions on the ground that his guilty pleas had been the unknowing and unintelligent product of his trial counsel's ineffectiveness. A postconviction claim may be denied without a hearing when the petitioner fails to submit with his petition evidentiary material setting forth sufficient operative facts to demonstrate substantive grounds for relief. *See* R.C. 2953.21(C); *State v. Pankey*, 68 Ohio St.2d 58, 428 N.E.2d

413 (1981); *State v. Jackson*, 64 Ohio St.2d 107, 413 N.E.2d 819 (1980). To prevail on a postconviction claim of ineffective assistance of counsel, the petitioner must demonstrate (1) that counsel's performance fell below an objective standard of reasonableness, and (2) that counsel's deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989).

{¶11} In support of his postconviction challenge to his trial counsel's effectiveness, Mr. Young offered only his own affidavit. He asserted that, at the plea hearing, he had been "oblivious to the fact" that the plea entry that the trial court had "read * * * into the record * * * WASN'T the plea [entry] that he had just read over, discussed and signed with his attorney," and that he had been, until sentencing, "under the impression that the Court had accepted his guilty plea[s] in return for an open 12 to 20 year plea [agreement] that the state had offered." Counsel, he insisted, was ineffective in neglecting to correct this mistaken "impression" and in failing to bring this matter to the trial court's attention.

{¶12} But the record shows that the trial court devoted considerable attention to the matter. And before imposing sentence, the assistant prosecuting attorney agreed with the trial court, without objection by Mr. Young or his counsel, that there had been "[n]o promises[,] * * * [n]o commitment on sentencing at all." Mr. Young asserted, after he was sentenced and in his affidavit in support of his postconviction petition, that there had been an agreed sentence, and that defense counsel had misled him concerning the terms of his plea agreement. But these assertions are not otherwise demonstrated. And the self-serving statements contained in his affidavit were

insufficient as a matter of law to rebut evidence of record to the contrary. *See State v. Kapper*, 5 Ohio St.3d 36, 448 N.E.2d 823 (1983).

{¶13} A postconviction petition is subject to "summary" denial when, as here, the record "negative[s] the existence of facts sufficient to entitle the prisoner to relief." *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph three of the syllabus. We, therefore, hold that the trial court properly denied Mr. Young's petition. *See Pankey*, 68 Ohio St. 2d at 59, 428 N.E.2d 413; *Jackson*, 64 Ohio St.2d 107, 413 N.E.2d 819, syllabus.

{¶14} Accordingly, we overrule the assignments of error and affirm the court's judgment.

Judgment affirmed.

HENDON, P.J., and **CUNNINGHAM, J.,** concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.