

[Cite as *State v. Raines*, 2004-Ohio-2524.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 03AP-1076 (C.P.C. No. 82CR07-2199B)
Gerald L. Raines,	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

O P I N I O N

Rendered on May 13, 2004

Ron O'Brien, Prosecuting Attorney, and *Susan E. Day*, for
appellee.

Gerald L. Raines, pro se.

APPEAL from the Franklin County Court of Common Pleas.

KLATT, J.

{¶1} Defendant-appellant, Gerald L. Raines, appeals from a judgment of the Franklin County Court of Common Pleas dismissing his petition for post-conviction relief. Because appellant's post-conviction petition was not timely filed, we affirm that judgment.

{¶2} In April 1984, appellant pled guilty to one count of murder in violation of R.C. 2903.02. The trial court found appellant guilty and sentenced him to a prison term of 15 years to life. Appellant did not file a direct appeal from that conviction. On

September 16, 2003, appellant filed a petition for post-conviction relief. The trial court dismissed that petition as untimely.

{¶3} Appellant appeals, assigning the following errors:

[1.] The trial court violated Ohio Criminal Rule 11, and defendant's constitutional rights by accepting defendant's involuntary guilty plea after defendant advised the court that his plea was not being entered voluntarily.

[2.] The defendant was denied the effective assistance of counsel in violation of U.S. Const. Amend. 6. where counsel misrepresented Ohio law, the duration of defendant's sentence, and the provision of parole eligibility to the defendant.

[3.] The defendant was accused, arrested, indicted, prosecuted and convicted on the word of an Unknown Informant which violated the defendant's sixth amendment right to the Ohio and United States Constitution.

[4.] The defendant was prosecuted and convicted on information from an Out-of-Court confession made by defendant's co-defendant while in custody at the Los Angeles Police Department, which violated defendant's sixth amendment right to the Ohio and United States Constitution.

[5.] The defendant was prosecuted on hearsay statements and testimony of an unreliable witness who later recanted his statements, and which denied the defendant of a fair trial and his sixth amendment right to the Ohio and United States Constitution.

[6.] The defendant was maliciously prosecuted on the hearsay statements and testimony of an unreliable witness who later recanted his statements which were purchased by the state prosecutor and which violated Federal law under title 18 U.S.C. 201(c)(2) and violated the defendant's right to a fair trial and defendant's sixth amendment right to the Ohio and United States Constitution.

{¶4} None of appellant's assignments of error address the threshold question of whether the trial court had jurisdiction to entertain his post-conviction petition. A

defendant such as appellant who was sentenced prior to September 21, 1995, and does not file a direct appeal from the criminal conviction, must file a petition for post-conviction relief within 180 days after the time for a direct appeal from that conviction expires, or within one year of September 21, 1995, whichever is later. See *State v. Walker* (June 26, 2001), Mahoning App. No. 00CA-118; *State v. Burke*, Franklin App. No. 02AP-677, 2002-Ohio-6840, at ¶9; R.C. 2953.21(A)(2). Appellant was sentenced in April 1984, and his time for filing a petition for post-conviction relief would have expired sometime in October 1984. Accordingly, he had until the later date of September 21, 1996, to file his petition for post-conviction relief. Appellant did not file his petition until September 16, 2003. Therefore, appellant's petition was untimely.

{¶5} A trial court is without jurisdiction to entertain an untimely petition for post-conviction relief unless petitioner demonstrates that one of the exceptions in former R.C. 2953.23(A) applies. *State v. Lee* (June 8, 2000), Franklin App. No. 99AP-668; *Burke*, supra. Those exceptions allow a trial court to consider untimely petitions for post-conviction relief in two situations: (1) where a petitioner shows that he was unavoidably prevented from discovering the facts upon which he relies to present his claims for relief; or (2) where a petitioner shows that the United States Supreme Court has recognized a new federal or state right, after the time period set forth in R.C. 2953.21(A)(2) expired, that applies retroactively to the petitioner and that is the basis of his claim for relief. See former R.C. 2953.23(A)(1)(a) and (b). In either case, the petitioner must also show by clear and convincing evidence that but for the constitutional error at trial, no reasonable fact finder would have found the petitioner guilty of the offense for which he was convicted. *Id.* at (A)(2).

{¶6} Appellant did not allege, much less establish, that either of these exceptions applied to his petition. With regard to former R.C. 2953.23(A)(1)(a), he did not allege that he was unavoidably prevented from discovering the facts upon which he relies in his petition. In fact, appellant's claims are all based on facts reflected in the trial record. With regard to former R.C. 2953.23(A)(1)(b), appellant did not make any claim based on a new federal or state right recognized by the United States Supreme Court that could be retroactively applied to appellant's case. Furthermore, appellant cannot satisfy the requirement of former R.C. 2953.23(A)(2) that but for the constitutional error at trial, no reasonable fact finder would have found the petitioner guilty of the offense for which he was convicted. Appellant was convicted pursuant to his guilty plea and not by a trial. See *State v. Halliwell* (1999), 134 Ohio App.3d 730, 735; *State v. Caplinger* (June 29, 2001), Franklin App. No. 00AP-1463.

{¶7} Because appellant failed to establish the applicability of either of the exceptions in former R.C. 2953.23(A), the trial court lacked jurisdiction to entertain his petition for post-conviction relief. *Lee, supra; Walker, supra*. Accordingly, the trial court did not err in dismissing the petition. *Lee, supra; State v. Hensley*, Lorain App. No. 03CA008293, 2003-Ohio-6457, at ¶7. Our disposition of the jurisdictional issue renders moot appellant's assignments of error, each of which addresses the merits of his petition. See *State v. Walls* (June 22, 2000), Cuyahoga App. No. 76394; *State v. Holt* (Mar. 30, 2001), Miami App. No. 00CA-51. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and WATSON, JJ., concur.
