

[Cite as *State v. Hairston*, 2009-Ohio-4387.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-205 (C.P.C. No. 05CR-11-7737)
Jovaugny R. Hairston,	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on August 27, 2009

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*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for  
appellee.

*Jovaugny R. Hairston*, pro se.

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, P.J.

{¶1} Defendant-appellant, Jovaugny R. Hairston ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which denied his petition for post-conviction relief. For the following reasons, we affirm.

{¶2} In August 2006, appellant pleaded guilty to aggravated robbery and related offenses. The trial court issued a judgment entry of conviction and sentence on

September 29, 2006. Appellant filed no appeal, but, on January 8, 2009, he filed a petition for post-conviction relief. The trial court denied the petition as untimely and as lacking merit.

{¶3} Appellant appeals, raising the following assignments of error:

**First Assignment of Error**

Trial court erred by granting summary judgment in favor of the State without affording an opportunity to reply to States motion to dismiss.

**Second Assignment of Error**

Trial court violated Due Process by denying an evidentiary hearing where allegations of ineffective assistance of counsel rely on evidence outside the record.

**Third Assignment of Error**

Trial court erred by denying petition as lacking merit.

**Fourth Assignment of Error**

Trial court improperly imposed consecutive sentences contrary to law, and improperly applied [*State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856].

{¶4} We address appellant's assignments of error together. Appellant argues that the trial court erred by denying his post-conviction relief petition. We disagree.

{¶5} The post-conviction relief process is a collateral civil attack on a criminal judgment, not an appeal of the judgment. *State v. Steffen*, 70 Ohio St.3d 399, 410, 1994-Ohio-111. Post-conviction relief is a narrow remedy that affords appellant no rights beyond those granted by statute. *State v. Calhoun*, 86 Ohio St.3d 279, 281, 1999-Ohio-102. We need not disturb a trial court's decision to deny a post-conviction

petition absent an abuse of discretion. *State v. White*, 118 Ohio St.3d 12, 2008-Ohio-1623, ¶45. An abuse of discretion connotes more than an error of law or judgment; it entails a decision that is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶6} Appellant filed no appeal of his conviction and sentence. R.C. 2953.21(A)(2) states that, if no direct appeal is taken, a defendant must file a post-conviction petition no later than 180 days after the expiration of the time for filing a direct appeal. Appellant's January 8, 2009 petition is well beyond that deadline, given that the trial court entered judgment of conviction and sentence on September 29, 2006.

{¶7} A trial court lacks jurisdiction to consider an untimely post-conviction petition unless an exception applies pursuant to R.C. 2953.23(A). *State v. Hatfield*, 10th Dist. No. 07AP-784, 2008-Ohio-1377, ¶7. We limit our analysis to whether the claim for relief appellant raised in his post-conviction petition meets an exception, and we do not consider new claims for relief he has raised on appeal. See *State v. Reynolds*, 10th Dist. No. 06AP-1006, 2007-Ohio-2189, ¶11. Appellant claimed in his petition that, before he entered his guilty plea, his attorney provided misleading information as to the charges to which he was pleading. Appellant cannot justify the untimely petition on grounds that he was "unavoidably prevented from discovery" of evidence to support this claim. See R.C. 2953.23(A)(1)(a). The identity of the charges to which appellant pleaded was available in the trial court record, and appellant would have been aware of his counsel's statements at the time they were made before the plea. Appellant's petition also did not evoke the exception that the United States Supreme Court

recognized a new federal or state right that applies retroactively. See R.C. 2953.23(A)(1). Nor did appellant present DNA evidence of his innocence. See R.C. 2953.23(A)(2). Accordingly, appellant's case does not fit within the R.C. 2953.23(A) exceptions.

{¶8} Because appellant failed to establish an exception that would allow the trial court to consider his untimely post-conviction petition, we conclude that the court lacked jurisdiction to consider the petition. Therefore, the court did not abuse its discretion by denying the petition, and we overrule appellant's four assignments of error. We affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN and SADLER, JJ., concur.

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