

[Cite as *State v. Shedwick*, 2013-Ohio-2778.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-954 (C.P.C. No. 10CR-12-7009)
Timothy O. Shedwick,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 28, 2013

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Timothy O. Shedwick, pro se.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶ 1} Defendant-appellant, Timothy O. Shedwick, pro se, appeals from the judgment of the Franklin County Court of Common Pleas denying his motion for appointment of counsel to assist him with his petition for post-conviction relief. For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} Appellant was indicted on multiple counts of aggravated burglary, aggravated robbery, robbery, and kidnapping, with each count containing firearm specifications. Appellant pleaded not guilty to the charges, and the case proceeded to a jury trial, which ended in a mistrial. The prosecution dismissed all of the counts against

appellant except for one count of aggravated burglary and one count of aggravated robbery, both with firearm specifications.

{¶ 3} Appellant was re-tried on the surviving counts, and the jury found appellant guilty. The trial court sentenced appellant to six years imprisonment on each count plus three years for each of the firearm specifications. The court merged the firearm specifications and ordered that the six-year terms be served concurrently to each other but consecutive to the three-year term for the firearm specifications.

{¶ 4} Appellant, represented by counsel, appealed his conviction and sentence, and this court affirmed in *State v. Shedwick*, 10th Dist. No. 12AP-3, 2012-Ohio-5249. Pursuant to R.C. 2953.21, appellant filed a petition for post-conviction relief with a request for an evidentiary hearing. The petition was accompanied with a motion for appointment of counsel and motion for expert assistance. The trial court denied appellant's petition for post-conviction relief, without a hearing, because it determined that the petition lacked merit. Given that decision, the court also denied appellant's motion for appointment of counsel and motion for expert assistance.

II. ASSIGNMENTS OF ERROR

{¶ 5} Appellant filed a timely notice of appeal and assigns the following as error:¹

[I.] The trial court erred, denying due process to Appellant, Incarcerated and Indigent, when it failed to appoint Counsel to investigate and assist in obtaining evidence to support evidentiary hearing.

[II.] The trial court abused its discretion in denying post conviction petition before allowing the use of the Public Defender's discretion.

III. DISCUSSION

¹ In a supplemental brief, appellant raised an additional assignment of error contending that the trial court erred by denying his petition for post-conviction relief on the merits. Plaintiff-appellee, the state of Ohio, moved to strike the brief, and on June 20, 2013, this court granted the motion to strike on grounds that appellant filed the supplemental brief without prior leave of court. Therefore, we decline to address the issue raised in the supplemental brief.

{¶ 6} Because they concern similar issues, we address together appellant's first and second assignments of error, in which he contends that the trial court erred by denying his motion for appointment of counsel to assist him with his petition for post-conviction relief. We disagree.

{¶ 7} An indigent petitioner has neither a state nor federal constitutional right to be represented by an attorney in a post-conviction proceeding. *State v. Crowder*, 60 Ohio St.3d 151, 152 (1991), citing *Pennsylvania v. Finley*, 481 U.S. 551 (1987). Nevertheless, pursuant to R.C. 120.16(A)(1) and (D), an indigent petitioner is statutorily entitled to representation by a public defender on a post-conviction petition if the public defender concludes that the issues raised by the petitioner have arguable merit. *State v. Madison*, 10th Dist. No. 08AP-246, 2008-Ohio-5223, ¶ 15. Conversely, a trial court does not err by denying a post-conviction petitioner's motion for appointment of counsel when the court determines that the petitioner is not entitled to an evidentiary hearing. *Id.* In order for the trial court to grant a hearing, the petitioner must provide evidence that demonstrates a cognizable claim of constitutional error that renders the petitioner's conviction or sentence void. *Id.* at ¶ 7. A trial court may deny a defendant's petition for post-conviction relief without a hearing if the petition, supporting affidavits, documentary evidence, and trial record do not demonstrate sufficient operative facts to establish substantive grounds for relief. *Id.*

{¶ 8} Upon review, we conclude that, because the trial court properly determined that appellant was not entitled to a hearing, the trial court did not err by denying appellant's motion for appointment of counsel. Therefore, we overrule appellant's first and second assignments of error.

IV. CONCLUSION

{¶ 9} Having overruled appellant's first and second assignments of error, the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BROWN and CONNOR, JJ., concur.
