

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	<b>O P I N I O N</b>
Plaintiff-Appellee,	:	
- VS -	:	<b>CASE NO. 2010-T-0014</b>
ALFONSIA M. PERRY,	:	
Defendant-Appellant.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 94 CR 42.

Judgment: Affirmed.

*Dennis Watkins*, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

*Alfonsia M. Perry*, pro se, PID# 300-444, Chillicothe Correctional Institution, P.O. Box 5500, Chillicothe, OH 45601 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Alfonsia M. Perry, appeals the Judgment Entry of the Trumbull County Court of Common Pleas, denying his Petition for Postconviction Relief. For the following reasons, we affirm the decision of the court below.

{¶2} The January 1994 Term of the Grand Jury of Trumbull County indicted Perry for the Aggravated Murder of Jeanette Purdue, in violation of R.C. 2903.01.

{¶3} On October 31, 1994, Perry was convicted of Aggravated Murder following a jury trial.

{¶4} On November 7, 1994, the trial court sentenced Perry to life imprisonment. Perry's conviction was affirmed on direct appeal. See *State v. Perry*, 11th Dist. No. 94-T-5165, 1997 Ohio App. LEXIS 3884.

{¶5} On December 4, 2009, Perry filed a Petition for Post Conviction Relief pursuant to R.C. 2953.21. Perry claimed to be entitled to relief based on the ineffective assistance of trial and appellate counsel and the denial of due process, equal protection, and fundamental fairness. In support, Perry noted that appointed trial counsel, Meridee Costanzo, was not qualified under Superintendence Rule 20.01 to represent a capital defendant; appointed appellate counsel, Michael Scala, was a business associate of Costanzo's husband and failed to raise the issue of her incompetence on appeal; appointed appellate counsel, Michael Partlow, was too overburdened to render effective assistance; the state's witness, William Cox, perjured himself regarding his employment as coroner at the time of trial; a psychologist's evaluation that Purdue's murder "was a tragic accident and not aggravated murder" was not introduced at trial; the crime scene was tainted by break-ins subsequent to the killing; and the trial was tainted by the presence of school children in the courtroom during the testimony of Purdue's minor son.

{¶6} On January 12, 2010, the trial court issued a Judgment Entry, dismissing Perry's Petition.

{¶7} On February 1, 2010, Perry filed his Notice of Appeal. On appeal, Perry raises the following assignment of error:

{¶8} "[1.] The Trumbull County Court and the Public Defender's Office (James Lewis) breached its contract with the Defendant/Appellant when BOTH FAILED TO

PROTECT and to safeguard the Constitutional rights of the Defendant WHO IS INDIGENT, and is found to have signed an indigent ‘contract’ with the court.”

{¶9} Perry argues the trial court denied him effective assistance of counsel by appointing counsel that were not-qualified, incompetent, and/or compromised by conflict-of-interests.

{¶10} We affirm the dismissal of Perry’s Petition on the grounds that it was untimely and, thus, the trial court was without jurisdiction to consider its merits.

{¶11} A petition for postconviction relief “shall be filed no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication.” R.C. 2953.21(A)(2). When a petition is untimely and no recognized exceptions to the 180-day deadline apply, a trial court is without jurisdiction to entertain the petition. R.C. 2953.23(A); *State v. Stoutamire*, 11th Dist. No. 2009-T-0073, 2010-Ohio-1166, at ¶14; *State v. West*, 2nd Dist. No. 08CA0102, 2009-Ohio-7057, at ¶7.

{¶12} In order for a trial court to consider an untimely postconviction relief petition, the petitioner must demonstrate either that he “was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, \*\*\* the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner’s situation, and the petition asserts a claim based on that right.” R.C. 2953.23(A)(1)(a) and (b). Alternatively, an untimely postconviction petition may be considered when DNA testing establishes the petitioner’s “actual innocence.” R.C. 2953.23(A)(2).

{¶13} In the present case, the trial transcript in Perry's direct appeal was filed on January 17, 1995. Thus, his Petition for postconviction relief is untimely by almost fifteen years. Perry's Petition does not claim to meet one of the statutory exceptions in R.C. 2953.23(A)(1) or (2). Accordingly, it was properly dismissed.

{¶14} The sole assignment of error is without merit.

{¶15} For the forgoing reasons, the Judgment of the Trumbull County Court of Common Pleas, dismissing Perry's Petition for Postconviction Relief, is affirmed. Costs to be taxed against appellant.

MARY JANE TRAPP, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.