**[Cite as *State v. Sansom*, 2010-Ohio-1918.]**

IN THE COURT OF APPEALS FOR CHAMPAIGN COUNTY, OHIO

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| STATE OF OHIO | : | |
| Plaintiff-Appellee | : | C.A. CASE NO. 2009 CA 38 |
| v. | : | T.C. NO. 2007 CR 142 |
| RONALD F. SANSOM | : | (Criminal appeal from Common Pleas Court) |
| Defendant-Appellant | : | |
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**O P I N I O N**

Rendered on the 30th day of April, 2010.

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DONOVAN, P.J.

**{¶ 1}** This matter is before the Court on the Notice of Appeal of Ronald Sansom, filed September 10, 2009. On June 14, 2007, Sansom was indicted on one count of operating a vehicle under the influence of alcohol or a drug of abuse, in violation of R.C. 4511.19(A)(1)(a)(G)(1)(d), a felony of the fourth degree, with a specification that within 20

years of committing the offense he had been convicted of, or pleaded guilty to, five or more equivalent offenses. R.C. 2941.1413.

**{¶ 2}** Sansom was arrested following a traffic stop after Officer Jade Michael Cooper, of the Urbana Police Division, observed Sansom hesitating at a stop light after it turned green and then making a wide left turn. Sansom smelled of alcohol, had glassy eyes, and his speech was slurred. He failed a horizontal gaze nystagmus test. Sansom refused a breathalyzer test, and he refused to sign a form acknowledging that his refusal would result in an automatic suspension of his driver's license. Sansom pled not guilty, and following a jury trial, he was convicted as charged. Sansom was sentenced to 30 months, including a 60 day mandatory term, and he was fined $800.00. On the specification, he received a five year mandatory sentence, for a total sentence of seven years and six months. Sansom's driver's license was suspended for 15 years, and mandatory substance abuse counseling was ordered. We affirmed his conviction and sentence on November 26, 2008. *State v. Sansom*, Montgomery App. No. 2007 CA 36 , 2008-Ohio-6240.

**{¶ 3}** On April 24, 2009, Sansom filed a Petition for Post Conviction Relief, arguing that he received ineffective assistance of counsel. The petition is supported with Sansom's affidavit as well as that of his fiancee, Amanda Terrell. Three unauthenticated letters are also attached: (1) from Sansom to Sansom's current appellate counsel; (2) from Sansom, dated July 17, 2008, to Sansom's prior appellate counsel, and (3) from Sansom's prior appellate counsel, dated August 29, 2008, to Sansom. According to Sansom, he "told his trial counsel to subpoena his medical records and his doctor for trial. He did not know that the lawyer had not done so. He did not discover that there had been no attempt to

obtain these records or subpoena his doctor until he was incarcerated in Chillicothe Correctional Institution." Sansom asserted that he suffers from a back injury to his L4 and L5 vertebrae and"'is unable to perform actions requiring dexterity such as sobriety tests." Sansom also argued that his attorney was deficient in that he did not request a jury view, because the street was congested with parked cars, requiring Sansom to make a wide turn. Sansom further argued that his attorney "failed to discuss post conviction remedies with the Appellant and Appellant did not discover that he had such rights until after retaining present counsel." Finally, according to Sansom, "there were problems concerning his sentencing. Counsel was advised that the Petitioner had re-paid his unemployment compensation to Job and Family Services, and that he was not on probation. Counsel did not correct these matters and Petitioner's sentence was affected thereby."

**{¶ 4}** On May 12, 2009, the State filed a Motion for Summary Judgment, and Sansom responded. The trial court granted the State's motion on August 17, 2009, without a hearing. In doing so, the court determined that Sansom's petition was untimely, and that he "is not entitled to tolling or extension of said filing deadline pursuant to R.C. 2953.23." The court further found that Sansom "was not unavoidably prevented from discovery of the facts upon which he now relies, that [he] has not identified U.S. Supreme Court recognition of a new right that applies retroactively to [him] or asserted a claim based on said new right, and that [Sansom] has not shown that but for alleged constitutional error at trial no reasonable factfinder would have found [him] guilty of the offense of which he was convicted."

**{¶ 5}** Sansom asserts one assignment of error as follows:

**{¶ 6}** "THE COURT ERRED IN DENYING THE APPELLANT'S PETITION FOR POST CONVICTION RELIEF WITHOUT A HEARING."

**{¶ 7}** "Civ. R. 56(C) provides that summary judgment may be granted when the moving party demonstrates that (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. (Internal citations omitted). Our review of the trial court's decision to grant summary judgment is de novo." *Cohen v. G/C Contracting Corp.*, Greene App. No. 2006 CA 102, 2007-Ohio-4888.

**{¶ 8}** R.C. 2953.21(A)(1) provides, "Any person who has been convicted of a criminal offense * * * and who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States * * * may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. The petitioner may file a supporting affidavit and other documentary evidence in support of the claim for relief." The law in Ohio is clear that a petition for post conviction 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 * * * ." R.C. 2953.21(A)(2). The parties agree that Sansom's petition was due on or about August 19, 2008.

**{¶ 9}** R.C. 2953.23(A)(1) prohibits a trial court from entertaining a late petition

unless both of the following provisions apply: "(a) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, subsequent to the period prescribed in division (A)(2) of section 2953.21 of the Revised Code * * * 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," and "(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted * * * ." "The phrase 'unavoidably prevented' means that a defendant was unaware of those facts and was unable to learn of them through reasonable diligence." *State v. McDonald*, Erie App. No. E-04-009, 2005-Ohio-798, ¶ 19. "The trial court lacks jurisdiction to consider an untimely petition for post-conviction relief, unless the untimeliness is excused under R.C. 2953(A)(1)(a)." (Citation omitted). *State v. Wright*, Montgomery App. Nos. 23301, 23462, 23597, 2010-Ohio-1512, ¶ 7.

**{¶ 10}** Finally, "'A post conviction proceeding is not an appeal of a criminal conviction, but rather, a collateral civil attack on the judgment.'" *State v. Gondor* (2006), 112 Ohio St.3d 377, 2006-Ohio-6676, ¶ 48. "In the interest of providing finality to judgments of conviction, courts construe the post-conviction relief allowed under R.C. 2953.21(A)(1) narrowly. (Internal citation omitted)." Id., ¶ 47.

**{¶ 11}** The State directs our attention to the following exchange at trial and we agree that the colloquy belies Sansom's claim that he was "unavoidably prevented" from discovering that his medical records and physician had not been subpoenaed until he was

incarcerated.

**{¶ 12}** "Q. When you got out of the vehicle, the officer testified that you stumbled getting out. Do you recall that?

**{¶ 13}** "A. I remember his saying that, yes.

**{¶ 14}** * *

**{¶ 15}** "Q. While we are talking about that, do you have any other physical disabilities?

**{¶ 16}** "A. Yes. I have got three bulging herniated disks in my back. L3, L4, L5.

**{¶ 17}** "Q. Did you show me your medical records?

**{¶ 18}** "A. Yes.

**{¶ 19}** "Q. Who was the doctor who treated you for the herniated disks?

**{¶ 20}** "A. Dr. Paul Andorfer.

**{¶ 21}** "Q. MR. SCHOCKLING: Objection, Your Honor.

**{¶ 22}** "THE COURT: Grounds?

**{¶ 23}** "MR. SCHOCKLING: I don't know where defense counsel is going with this, but the only discovery the State has received was the name of the first witness so if there is any sort of testimony here as far as the medical records, the State has not had the opportunity to review those.

**{¶ 24}** "The State would ask the testimony be limited to simply to what defendant's condition is and any medical records or any possible doctors who he treated with, that he not be allowed to testify as to that.

**{¶ 25}** "THE COURT: Sustained."

**{¶ 26}** As the State notes, Sansom had reason to question whether his records had been subpoenaed once the trial court sustained the State's objection. Sansom also had reason to question whether Dr. Andorfer had been subpoenaed when he did not testify at trial. We agree with the State that "Sansom's failure to make further inquiry is wholly inconsistent with the exercise of reasonable diligence."

**{¶ 27}** Similarly, regarding Sansom's assertion that his counsel failed to request a jury view, it is obvious that Sansom, having been present at trial, was not unavoidably prevented from discovering that a jury view did not occur until months after trial.

**{¶ 28}** Regarding Sansom's assertion that his counsel's performance was deficient in that he did not advise Sansom of post conviction remedies, "R.C. Chapter 2953 explicitly provides for the remedy of post-conviction relief and is available to anyone. Nothing prevented [Sansom] or his appellate counsel from finding the remedy in the revised code. That fact that neither [Sansom] nor his appellate counsel searched the revised code for such a remedy or realized that they had a right to file a petition for post-conviction relief does not amount to undiscoverable facts. Thus, no undiscoverable facts exist to support [Sansom's] petition and he cannot meet the requirements of R.C. 2953.23(A) for a trial court to consider an untimely filed petition." *State v. Rideau*, Montgomery App. No. 18624, 2001-Ohio-1536. Further, as the trial court noted, Sansom's claimed ignorance of the post conviction remedy lacks credibility, given that he filed a pro se motion addressed to his sentence on March 17, 2008, that provides in part, "Defendant further states that this issue is ripe for this court and does not fall under a Post Conviction Relief Petition (R.C. 2953.21), but in accordance to Criminal Rule 52, and Criminal Rule 36." Sansom's pro se motion

was filed five months before his petition was due and over 13 months before it was filed.

**{¶ 29}** Finally, regarding the errors which Sansom asserts affected his sentence, as the trial court noted, Sansom "was or should have been aware of this alleged error at [the] sentencing hearing. Thus, claims based on these alleged facts are time-barred pursuant to R.C. 2953.21 and may not be extended pursuant to R.C. 2953.23."

**{¶ 30}** There being no genuine of material fact that Sansom's petition was untimely, and that the trial court lacked jurisdiction to address its merits, the trial court properly granted the State's motion for summary judgment and denied Sansom's petition without a hearing. Sansom's assigned error is overruled, and the judgment of the trial court is affirmed.

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GRADY, J. and RINGLAND, J., concur.

(Hon. Robert P. Ringland, Twelfth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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