

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

STATE OF OHIO, : Case No. 14CA3655
Plaintiff-Appellee, :
v. : DECISION AND
RAY S. HEID, : JUDGMENT ENTRY
Defendant-Appellant. : **RELEASED: 04/13/2015**

APPEARANCES:

Ray S. Heid, Chillicothe, Ohio, pro se appellant.

Mark E. Kuhn, Scioto County Prosecuting Attorney, and Danielle M. Parker, Scioto County Assistant Prosecuting Attorney, Portsmouth, Ohio, for appellee.

Harsha, J.

{¶1} Ray S. Heid pleaded guilty to aggravated arson and arson and the trial court sentenced him to prison. After granting him judicial release and community control, the trial court revoked the community control upon Heid’s admission that he had violated it. The court reimposed his original prison sentence.

{¶2} Nearly six years later Heid filed motions, including one after he filed a “legal notice” asking to vacate his conviction and sentence, seeking court records without cost. The trial court denied these motions. Instead of appealing the judgments, Heid filed a second petition for postconviction relief and a motion for leave to file a delayed appeal from his judgment of conviction and sentence. In support of these postconviction filings Heid filed a third motion for transcripts and court records without cost. Once again the trial court denied the request. The trial court subsequently denied

his petition for postconviction relief; we denied his motion for leave to file a delayed appeal from his judgment of conviction and sentence.

{¶3} In this appeal Heid claims that the trial court erred by failing to grant him access to the requested court records to support his postconviction remedies. We disagree. Heid's successive claim for the same records he requested twice before was barred by res judicata. Moreover, his motion for leave to file a delayed appeal did not mature into a pending proceeding at the time of his request for records because we did not grant Heid leave to proceed. Finally, because his time to file a direct appeal and a petition for postconviction relief had long since expired, Heid failed to establish that the requested records were necessary to support a justiciable claim. We affirm the judgment of the trial court denying Heid's successive motion for court records without cost.

I. FACTS

{¶4} In 2004 the Scioto County Grand Jury returned an indictment charging Heid with one count of aggravated arson and one count of arson. In 2005 Heid pleaded guilty to the charges, and the Scioto County Court of Common Pleas sentenced him to an aggregate prison term of five years. Then in August 2006 the trial court granted Heid's request for judicial release and ordered him placed on five years of community control. Heid subsequently admitted violating the terms of his community control and in May 2008 the trial court revoked his community control. It reimposed his original prison sentence, to be served consecutively to his prison term in a separate case.

{¶15} Nearly six years later in February 2014, Heid filed a motion for production of transcripts and court records without cost, purportedly pursuant to the federal Freedom of Information Act. In March 2014 the trial court denied the motion.

{¶16} Heid then filed a “legal notice of violation” of R.C. 2941.401 and sought to vacate his conviction. In a memorandum in support of this filing Heid claimed several violations, including constitutional and statutory rights to a speedy trial and constitutional violations associated with his guilty plea. While that “notice” was pending, Heid filed his second motion for court records without cost, again citing the federal Freedom of Information Act. The trial court denied Heid’s “legal notice” and motion.

{¶17} A little more than a week later in June 2014, Heid filed a motion in this court for leave to file a delayed appeal of his 2005 convictions. He also filed a petition in the trial court for postconviction relief. In July 2014, Heid filed his third motion for sentencing transcripts and court records without cost and a motion for discovery in the case. In a memorandum in support Heid again specified that his motion for records was pursuant to the federal Freedom of Information Act. On August 20, 2014, the trial court denied Heid’s motion for court records. Subsequently, we denied Heid’s motion for delayed appeal in Scioto App. No. 14CA3632, and the trial court denied Heid’s petition for postconviction relief. This appeal is from the trial court’s denial of his third motion for court records without cost.

II. ASSIGNMENT OF ERROR

{¶18} Heid assigns the following error for our review:

The trial court committed plain error and violated Ray S. Heid’s right to due process and equal protection of the laws when it failed to abide by Ohio law and refused to grant him access to court records in order to adequately support his claims in redressing his grievance in post-

conviction remedies created by the state. Thus violating his right to the First, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; Ohio Constitution, Article I, Sections 1, 2, 3, 10, 11, and 16; R.C. 2317.48; 149.43; and other Statutory laws.

III. LAW AND ANALYSIS

{¶9} In his sole assignment of error Heid asserts that the trial court erred in denying his motion for court records without cost. In a memorandum in support of this motion, he claimed—as he had in previous similarly worded motions—that he filed them pursuant to the federal Freedom of Information Act (“FOIA”), 5 U.S.C. 552.

{¶10} Insofar as Heid premised his entitlement to the requested records on FOIA, the court correctly denied his requests because FOIA does not apply to nonfederal agencies and officers. *See State ex rel. Cincinnati Enquirer v. DuPuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163, citing 5 U.S.C. 551(1) and 552(f); *State v. Gibson*, 2d Dist. Champaign No. 06CA37, 2007-Ohio-7161, ¶ 10 (“the Federal Freedom of Information Act * * * does not apply to state or local government agencies or officers”).

{¶11} Heid argued in his memorandum in opposition to the state’s motion to dismiss this appeal that his motion was premised on R.C. 149.43(B)(8). We relied on this representation in denying the dismissal motion, but a review of the record indicates that Heid never cited this provision in his motion or supporting memorandum. Nevertheless, we will address the applicability of this provision in the interests of justice.

{¶12} R.C. 149.43(B)(8) creates a heightened standard for convicted inmates requesting copies of public records concerning a criminal investigation or prosecution:

A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record

concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

{¶13} By enacting this provision “[t]he General Assembly clearly evidenced a public-policy decision to restrict a convicted inmate’s unlimited access to public records in order to conserve law enforcement resources.” See *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5838, 856 N.E.2d 966, ¶ 14, construing the similarly worded former R.C. 149.43(B)(4). To achieve this purpose “R.C. 149.43(B)(8) requires an incarcerated criminal offender who seeks records relating to an inmate’s criminal prosecution to obtain a finding by the sentencing judge or the judge’s successor that the requested information is necessary to support what appears to be a justiciable claim.” *State ex rel. Fernbach v. Brush*, 133 Ohio St.3d 151, 2012-Ohio-4214, 976 N.E.2d 889, ¶ 2, citing *State ex rel. Chatfield v. Flautt*, 131 Ohio St.3d 383, 2012-Ohio-1294, 965 N.E.2d 304.

{¶14} The word “justiciable” is not defined by statute so we must construe it in accordance with rules of grammar and common usage. *State ex rel. Baroni v. Colletti*, 130 Ohio St.3d 208, 2011-Ohio-5351, 957 N.E.2d 13, ¶ 18; R.C. 1.42. According to its common usage, a “justiciable” claim is one that is “properly brought before a court of justice; capable of being disposed of judicially.” *Black’s Law Dictionary* 882 (8th Ed.2004). Consistent with this definition, to be “justiciable” a claim must be capable of affording appropriate relief. See *State v. Seal*, 4th Dist. Highland No. 13CA10, 2014-

Ohio-4168, ¶ 8, citing *State v. Wilson*, 2d Dist. Montgomery No. 23734, 2011-Ohio-4195, ¶ 9. “Establishing a justiciable claim ordinarily involves identifying a ‘pending proceeding with respect to which the requested documents would be material.’ ” *State v. Rodriguez*, 12th Dist. Preble No. CA2013-11-011, 2014-Ohio-2583, ¶ 14, quoting *State v. Rodriguez*, 6th Dist. Woods Nos. WD-13-026, WD-13-053, and WD-13-071, 2014-Ohio-1313, ¶ 5; *Seal* at ¶ 8.

{¶15} We review the trial court’s decision on whether the inmate requesting these records established a justiciable claim under an abuse of discretion standard. *Id.* “A trial court abuses its discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary.” *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34. Included within this definition is the situation in which a trial court does not engage in a sound reasoning process. *Id.*

{¶16} There are several reasons why the trial court did not abuse its discretion in denying Heid’s motion for court records without cost. Heid’s motion was the third one requesting the same case records and citing the same authorities that he had filed in a five-month span in 2014. Heid’s second motion was filed just after he filed a “legal notice” seeking the vacation of his convictions and sentence based in part on constitutional grounds, which constituted a petition for postconviction relief. See *State v. Reynolds*, 79 Ohio St.3d 158, 160, 679 N.E.2d 1131 (1997), syllabus (“Where a criminal defendant, subsequent to his or her direct appeal, files a motion seeking vacation or correction of his or her sentence on the basis that his or her constitutional rights have been violated, such a motion is a petition for postconviction relief as defined in R.C. 2953.21”); *State v. Beach*, 4th Dist. Gallia No. 11CA4, 2012-Ohio-1630, ¶ 6.

Heid did not appeal the trial court's judgments denying his first and second motions; instead, he filed a third motion. Res judicata barred Heid from filing a successive motion seeking the same records. See *State ex rel. Barb v. Cuyahoga Cty. Jury Commr.*, 128 Ohio St.3d 528, 2011-Ohio-1914, 947 N.E.2d 670, ¶ 1 ("Res judicata barred Herbert from instituting his own mandamus action seeking some of the same records that his brother requested because-as Danny's designee-he was in privity with him"); *Rodriguez*, 6th Dist. Wood No. WD-13-030, 2014-Ohio-1453, ¶ 7 (convicted inmate's second request for records relating to the investigation that led to his arrest for drug trafficking was barred by res judicata).

{¶17} Moreover, Heid's delayed appeal was not pending at the time he filed his third motion for court records without cost. Heid did not perfect a direct appeal from his 2005 convictions and sentence. So when he sought to appeal them nearly nine years later in 2014, he had to seek leave to file a delayed appeal pursuant to App.R. 5. Because we denied his motion for delayed appeal, an appeal was never pending, even though his motion was.

{¶18} Finally, although his second petition for postconviction relief was pending at the time Heid filed his third motion for court records, he did not establish that the records sought contained information that would be either necessary or material to his successive petition. R.C. 2953.21(A)(2) provides that if there was no direct appeal, the petitioner has 180 days after the deadline for filing a direct appeal to timely file a petition for postconviction relief.¹ See *State v. Burton*, 4th Dist. Gallia No. 13CA12, 2014-Ohio-2549, ¶ 13. Heid did not timely file a direct appeal from his 2005 convictions and

¹ Effective March 23, 2015, R.C. 2953.21(A)(2) was amended to extend the period to file postconviction relief petitions to 365 days following the expiration of the time for filing the appeal.

sentence; instead he filed his first petition for postconviction relief over eight years later, followed by his second petition shortly after his first was denied. Therefore, to establish his right to file his untimely, successive petition, he had to establish that he was unavoidably prevented from discovery of the facts upon which he relied. R.C. 2953.23(A)(1)(a).² But Heid did not argue, much less prove, that the requested records could establish this point, i.e., that he was precluded from discovering the facts supporting his second petition for postconviction relief until after he filed his first petition. See *State v. Atakpu*, 2d Dist. Montgomery No. 25232, 2013-Ohio-4392, ¶ 13 (upholding a trial court’s judgment denying a convicted inmate’s motion for public records under R.C. 149.43(B)(8) because, among other reasons, “[t]he limitations period for appeals and post-conviction actions pertaining to [the inmate’s] criminal case are presently time-barred”). In fact, even if we did not consider Heid’s petition to be a successive petition, Heid also failed to establish that the requested records would contain evidence to support a finding that he was unavoidably prevented from discovering the facts supporting his postconviction or delayed appeal claims until after the time for filing his postconviction petition or perfect his direct appeal had lapsed. That is, Heid’s lack of access to the requested records did not impact the lack of merit of his motion for delayed appeal and petition for postconviction relief. See *Rodriguez*, 12th Dist. Preble No. CA2013-11-011, 2014-Ohio-2583, at ¶ 17 (affirming trial court’s decision denying convicted inmate’s public records request because, inter alia, “we fail to see how any additional documentation regarding his arrest, conviction, or appeal, if any such

² R.C. 2953.23(A)(1) provides an alternative to satisfy this requirement, but that alternative—the United States Supreme Court recognized a new federal or state right that applies retroactively to persons and the petitioner’s situation and the petition asserts a claim based on that right—is inapplicable to Heid’s successive petition.

documentation exists, would have any impact on these [postconviction] matters going forward”).

{¶19} Therefore, the trial court did not abuse its broad discretion in denying Heid’s successive motion for court records. We overrule Heid’s sole assignment of error.

IV. CONCLUSION

{¶20} The trial court acted reasonably when it denied Heid’s successive motion for court records. We affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hoover, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.