

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

LAWRENCE D. BALDWIN

Defendant-Appellant

: JUDGES:

:
: Hon. Julie A. Edwards, P.J.
: Hon. Sheila G. Farmer, J.
: Hon. Patricia A. Delaney, J.

: Case No. 09-CA-262

: O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas Case No. 2006-CR-0807

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

June 21, 2010

APPEARANCES:

For Plaintiff-Appellee:

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KATHLEEN O. TATARSKY 0017115
Assistant Prosecuting Attorney
(Counsel of Record)

For Defendant-Appellant:

LAWRENCE D. BALDWIN, pro se
Inmate No. 513-561
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P.O. Box 57
Marion, Ohio 43301

Delaney, J.

{¶1} Defendant-Appellant, Lawrence Baldwin, appeals the judgment of the Stark County Court of Common Pleas, denying his motion for resentencing without a hearing.

{¶2} Appellant was originally indicted on one count of robbery, a felony of the second degree, in violation of R.C. 2911.02(A)(2). After a jury trial where Appellant represented himself, he was found guilty as charged in the indictment and was sentenced to seven years in prison.

{¶3} Appellant was appointed counsel for the purposes of his direct appeal. In that appeal, Appellant argued that his conviction was against the manifest weight of the evidence. In a unanimous decision, this Court affirmed Appellant's conviction. *State v. Baldwin*, 5th Dist. No. 2006CA00292, 2007-Ohio-5812.

{¶4} Subsequent to his appeal, Appellant filed a petition for post-conviction relief and that petition was denied on November 7, 2007. Additionally, Appellant filed a Writ of Mandamus with this Court, requesting that the trial court issue Findings of Facts and Conclusions of Law with respect to its judgment on his post-conviction petition. This Court granted the writ in *State v. Baldwin*, 5th Dist. No. 2007CA00341, 2008-Ohio-837.

{¶5} On September 14, 2009, Appellant filed what was essentially a motion for resentencing, claiming that his sentence was void because it did not state the "O.R.C." or "felony level" of the offense. The trial court denied Appellant's motion on September 24, 2009.

{¶6} It is from this judgment that Appellant now appeals, raising one Assignment of Error:

{¶7} “I. THE TRIAL COURT ERRED WHEN IT DENIED APPELLANTS [SIC] MOTION FOR RE-SENTENCING HEARING. (5TH, 6TH, 8TH, AND 14TH AMENDMENT VIOLATIONS.)

I.

{¶8} In Appellant’s sole assignment of error, he argues that the trial court erred in denying Appellant’s “Motion for Re-Sentencing Hearing.” We disagree.

{¶9} Appellant’s “Motion for Re-Sentencing Hearing” is a successive post-conviction petition. *State v. Reynolds* (1997), 79 Ohio St.3d 158, 679 N.E.2d 1131; see also R.C. 2953.21.

{¶10} Ohio R.C. 2953.21 governs the filing of post-conviction petitions as follows:

{¶11} “(A)(1)(a) Any person who has been convicted of a criminal offense or adjudicated a delinquent child 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, and any person who has been convicted of a criminal offense that is a felony, who is an inmate, and for whom DNA testing that was performed under sections 2953.71 to 2953.81 of the Revised Code or under section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code provided results that establish, by clear and convincing evidence, actual innocence of that felony offense or,

if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death, 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.

{¶12} “(b) As used in division (A)(1)(a) of this section, “actual innocence” means that, had the results of the DNA testing conducted under sections 2953.71 to 2953.81 of the Revised Code or under section 2953.82 of the Revised Code been presented at trial, and had those results been analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted, or, if the person was sentenced to death, no reasonable factfinder would have found the petitioner guilty of the aggravating circumstance or circumstances the petitioner was found guilty of committing and that is or are the basis of that sentence of death.

{¶13} “(2) Except as otherwise provided in section 2953.23 of the Revised Code, a petition under division (A)(1) of this section 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 or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the supreme court. If no appeal is taken, except as otherwise provided in section 2953.23 of

the Revised Code, the petition shall be filed no later than one hundred eighty days after the expiration of the time for filing the appeal.

{¶14} * * *

{¶15} “(4) A petitioner shall state in the original or amended petition filed under division (A) of this section all grounds for relief claimed by the petitioner. Except as provided in section 2953.23 of the Revised Code, any ground for relief that is not so stated in the petition is waived.”

{¶16} Having had several prior opportunities to litigate all of the claims that Appellant sets forth in his latest motion, Appellant's most recent round of arguments are barred under the doctrine of res judicata. *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104. The *Perry* court explained the doctrine as follows:

{¶17} “Under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial which resulted in that judgment of conviction or on an appeal from that judgment.”

{¶18} As such, Appellant's only remaining avenue for airing his arguments falls under R.C. 2953.23. When dealing with a successive post-conviction petition, R.C. 2953.23 allows the filing of such a petition in the following limited circumstances:

{¶19} “(A) Whether a hearing is or is not held on a petition filed pursuant to section 2953.21 of the Revised Code, a court may not entertain a petition filed after the expiration of the period prescribed in division (A) of that section or a second petition or

successive petitions for similar relief on behalf of a petitioner unless division (A)(1) or (2) of this section applies:

{¶20} “(1) Both of the following apply:

{¶21} “(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 or to the filing of an earlier petition, 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.

{¶22} “(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 or, if the claim challenges a sentence of death that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.

{¶23} “(2) The petitioner was convicted of a felony, the petitioner is an inmate for whom DNA testing was performed under sections 2953.71 to 2953.81 of the Revised Code or under section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code, and the results of the DNA testing establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the

person was found guilty of committing and that is or are the basis of that sentence of death.”

{¶24} Appellant has not argued, nor would it be appropriate to do so, that the results of DNA testing establish by clear and convincing evidence, his actual innocence under R.C. 2953.23(A)(2).

{¶25} Moreover, he has failed to establish, under R.C. 2953.23(A)(1) that he was either (a) unavoidably prevented from the discovery of facts upon which he relies to present his claim for relief or that the U.S. Supreme Court has recognized a new federal or state right that applies retroactively to a person in his situation, and that (b) by clear and convincing evidence, but for the constitutional error at trial, no reasonable factfinder would have found him guilty.

{¶26} Appellant has not asserted, nor would it be a valid argument, that the U.S. Supreme Court has recognized a new federal or state right that applies retroactively to a person in Appellant’s situation. Thus, he must establish, by clear and convincing evidence that but for a constitutional error committed at trial, no reasonable factfinder would have found him guilty of the offenses he was convicted of and that he was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief.

{¶27} Appellant has failed to meet his burden that he was unavoidably prevented from discovery of the facts upon which he relies.

{¶28} Additionally, Appellant failed to meet his initial burden of providing with his petition evidence demonstrating a cognizable claim of constitutional error. Thus,

Appellant has failed to satisfy the condition in R.C. 2953.23(A)(1)(b) that he would not have been convicted but for constitutional error at trial.

{¶29} Based on the foregoing, we find that Appellant has failed to set forth any claims that are not barred by res judicata or that would justify an oral or evidentiary hearing. Appellant has failed to meet his burden and therefore, we do not find that the trial court erred in denying Appellant a hearing. The trial court properly denied Appellant's motion, as it was either barred by res judicata or did not meet the requirements of R.C. 2953.23.

{¶30} Appellant's assignment of error is overruled.

{¶31} For the foregoing reasons, the judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J.

Edwards, P.J. and

Farmer, J. concur.

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

HON. SHEILA G. FARMER

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
LAWRENCE D. BALDWIN	:	
	:	
	:	
Defendant-Appellant	:	Case No. 09-CA-262
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

HON. SHEILA G. FARMER