

[Cite as *Dillon v. Cottrill*, 2015-Ohio-1785.]

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

RANDY DILLON

Petitioner

-vs-

JUDGE KELLY J. COTTRILL
COURT OF COMMON PLEAS
MUSKINGUM COUNTY, OHIO

Respondent

: JUDGES:
: Hon. Sheila G. Farmer, P.J.
: Hon. John W. Wise, J.
: Hon. Patricia A. Delaney, J.

: CASE NO. CT2014-0053

: OPINION

CHARACTER OF PROCEEDING: Original Action; Writ of Mandamus

JUDGMENT: WRIT DENIED

DATE OF JUDGMENT ENTRY: May 7, 2015

APPEARANCES:

For Petitioner:

Randy Dillon #579-012
Ross Correctional Inst.
P.O. Box 7010
Chillicothe, Ohio 45601

For Respondent:

No Appearance

Delaney, J.

{¶1} Petitioner, Randy Dillon, has filed a Petition for Writ of Mandamus requesting that we order the trial court to issue findings of fact and conclusions of law. Petitioner filed a Petition for Post Conviction Relief in the trial court on December 4, 2014. On December 8, 2014, the trial court denied the petition. Petitioner believes the trial court was required to issue findings of fact and conclusions of law pursuant to R.C. 2953.21. He claims without the findings of fact and conclusions of law, he has no final appealable order.

{¶2} To be entitled to the issuance of a writ of mandamus, a petitioner must demonstrate: (1) a clear legal right to the relief prayed for; (2) a clear legal duty on the respondent's part to perform the act; and, (3) that there exists no plain and adequate remedy in the ordinary course of law. *State ex rel. Master v. Cleveland*, 75 Ohio St.3d 23, 26-27, 1996 Ohio 228, 661 N.E.2d 180; *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41, 374 N.E.2d 641, citing *State ex rel. National City Bank v. Bd. of Education* (1977) 52 Ohio St.2d 81, 369 N.E.2d 1200.

{¶3} Petitioner was convicted of the rape and attempted murder of a 14 month old child. He received a life sentence without the possibility of parole. Petitioner pursued an appeal of his conviction and sentence. The transcript in that case was filed on August 8, 2008. Pursuant to R.C. 2953.21, a petition for post conviction relief was due 180 days after the filing of the transcript which would have been February 23, 2009. The petition for post conviction relief filed in the trial court was untimely as it was filed more than five years after the filing

deadline. In his petition for post conviction relief, Petitioner argued he was exempted from the 180 day limit because he was unavoidably prevented from discovering the facts in his petition.

{¶4} The Supreme Court has held, “[A] trial court need not issue findings of fact and conclusions of law when it dismisses an untimely [postconviction-relief] petition.” *State ex rel. Kimbrough v. Greene*, 98 Ohio St.3d 116, 2002-Ohio-7042, 781 N.E.2d 155, ¶ 6. “This rule applies even when the defendant * * * claims, under R.C. 2953.23, that he was unavoidably prevented from discovery of the facts to present his claim for post-conviction relief.” *State ex rel. Hach v. Summit Cty. Court of Common Pleas*, 102 Ohio St.3d 75, 2004-Ohio-1800, 806 N.E.2d 554, ¶ 9.” *State ex rel. Ashipa v. Kubicki*, 114 Ohio St.3d 459, 2007-Ohio-4563, 872 N.E.2d 1235, 1236, ¶ 4.

{¶5} Because the petition for post conviction relief was untimely, the trial court had no clear duty to issue findings of fact and conclusions of law even though Petitioner claimed an exception to the 180 day time limit. For this reason, mandamus does not lie. The petition is denied.

By: Delaney, J.
Farmer, P.J. and
Wise, J. concur

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