

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-10-1170

Appellee

Trial Court No. CR98-2586

v.

Tyrone Edwards

DECISION AND JUDGMENT

Appellant

Decided: December 30, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Mark T. Herr, Assistant Prosecuting Attorney, for appellee.

Tyrone Edwards, pro se.

* * * * *

SINGER, J.

{¶ 1} Appellant, Tyrone Edwards, appeals the judgment of the Lucas County Court of Common Pleas, dismissing his petition for postconviction relief. Pursuant to 6th Dist.Loc.App.R. 12(A), we sua sponte transfer this matter to our accelerated docket and hereby render our decision.

{¶ 2} On August 28, 1998, appellant and an accomplice were arrested while in possession of more than 100 grams of crack cocaine and in excess of 25 grams of powder

cocaine. Appellant was charged with possession of crack cocaine as a first degree felony, with a major drug offender specification. A second count, charging possession of powder cocaine as a third degree felony, was also charged.

{¶ 3} When the trial court overruled appellant's motion to suppress, the matter proceeded to a trial before a jury. At trial, police testified to the circumstances of appellant's arrest. A police drug analyst testified to the composition and quantity of the drugs seized from appellant.

{¶ 4} Appellant was convicted as charged. The trial court sentenced him to a ten year term of incarceration on the first count and a concurrent four year term on the second count.

{¶ 5} Appellant appealed his conviction, citing trial court error in denying his motion to suppress. We found appellant's sole issue on appeal not well-taken and affirmed his conviction. *State v. Edwards*, 6th Dist. No. L-00-1149, 2002-Ohio-5502, ¶ 11.

{¶ 6} On October 16, 2009, appellant filed a "Motion for an Evidentiary Hearing Pursuant to Criminal Rule 52(B)" in the trial court. In his memorandum in support, appellant suggested that he was denied his Sixth Amendment right to confrontation because, "* * * there exist no state's corroborated forensic [sic] chemist's live testimony of a person that performed the analysis to prove the content, weight, and identity of the substance introduced * * *." As a result, appellant maintained, there was insufficient evidence to support his conviction.

{¶ 7} The trial court concluded that appellant's motion was actually a petition for postconviction relief. As such, the court found the petition untimely, without any showing that appellant was unavoidably prevented from discovering the facts supporting his claim. The court also found his petition and affidavit were inadequate to support his claim of constitutional error. On these conclusions, the court dismissed appellant's petition. This appeal followed.

{¶ 8} In four assignments or error, appellant argues that: (1) he was entitled to a "default" judgment on his motion when the state failed to timely respond; (2) the trial court erred in converting his motion to a postconviction relief petition; (3) there was insufficient evidence to support his conviction; and (4) his sentencing was improper.

{¶ 9} R.C. 2953.21(A)(1) defines the criteria under which postconviction relief may be sought:

{¶ 10} "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 * * * stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence * * *."

{¶ 11} By this definition when, after direct appeal, a criminal defendant moves to vacate his or her conviction on the basis that the movant's constitutional rights have been violated, such a motion is a petition for postconviction relief as defined in R.C. 2953.21. *State v. Reynolds* (1997), 79 Ohio St.3d 158, 160.

{¶ 12} Appellant has been convicted of a criminal offense and in his motion claims a denial or infringement of his constitutional rights as a basis for vacating his conviction. As a result, the trial court properly concluded that his "motion" was a petition for postconviction relief. Appellant's second assignment of error is not well-taken.

{¶ 13} A party may not be granted postconviction relief unless he has satisfied the statutory requirements for such relief. As a result, even if the state fails to respond in any manner to such a petition, the petitioner is not entitled to any judgment in his or her favor, absent satisfaction of those requirements.

{¶ 14} R.C. 2953.21(A)(2) provides that a petitioner may file a petition for postconviction relief ordinarily no later than 180 after the transcript is filed in a direct appeal, unless the petitioner can show: (1) that he or she was unavoidably prevented from discovering the facts relied upon in support of relief; or (2) "* * * 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). The petitioner must also show, by clear and convincing evidence, that but for the error no reasonable factfinder would have found him or her guilty. R.C. 2953.23(A)(1)(b).

{¶ 15} Appellant's petition was well beyond the 180 days and made none of the required showings. Therefore, appellant was not entitled to relief under the statute. Appellant's first assignment of error is not well-taken.

{¶ 16} Since he has failed to satisfy the prerequisites to the statute, his remaining two assignments of error, which go to the merits of his petition, are moot.

{¶ 17} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.