

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

State of Ohio

Court of Appeals No. L-10-1236

Appellee

Trial Court No. CR0200902633

v.

Ronald Dewayne Pitts

**DECISION AND JUDGMENT**

Appellant

Decided: April 29, 2011

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Ronald Pitts, pro se.

\* \* \* \* \*

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Ronald Dewayne Pitts, pro se, appeals the August 11, 2010 judgment of the Lucas County Court of Common Pleas which denied his petition

for postconviction relief filed pursuant to R.C. 2953.21. For the foregoing reasons, we affirm the trial court's judgment.

{¶ 2} On August 25, 2009, appellant was indicted on one count of abduction, R.C. 2905.02(A)(2) and (B), a third degree felony. On October 28, 2009, appellant entered a no contest plea to the lesser included charge of attempted abduction, a fourth degree felony. Thereafter, on December 9, 2009, appellant was sentenced to five years of community control with the first six months to be served at the Corrections Center of Northwest Ohio. Appellant was also ordered to submit to a DNA test and random urinalysis, obtain his GED and maintain employment, and commit no additional offenses.

{¶ 3} Appellant filed multiple motions to modify his sentence; the motions were denied. On June 7, 2010, appellant filed a petition for postconviction relief. In his motion, appellant argued that he received ineffective assistance of trial counsel and that the state wrongly prosecuted him on an "unsubstantiated" charge.

{¶ 4} In response, the state argued that the ineffective assistance of counsel claim could have been raised on direct appeal and, thus, was barred by res judicata. The state also asserted that appellant failed to support his claims with any evidentiary materials.

{¶ 5} On August 11, 2010, the trial court denied appellant's petition without a hearing. The court found that appellant's claims were barred by res judicata and, regardless, appellant failed to establish ineffective assistance of counsel. This appeal followed.

{¶ 6} Appellant now raises the following assignments of error for our review:

{¶ 7} "1. The appellant received ineffective assistance of counsel, as guaranteed him via the sixth (6th) Amendment of the U.S. Const. of America, in light of the deficient performance and incompetence exercised by defense counsel, throughout the criminal proceeding had in the case at bar, sub judice.

{¶ 8} "2. The Post-conviction Court erroneously dismissed the petitioner's Post-conviction Petition based on issues or facts of law inapplicable by law to the true facts and issues presented by the appellant within the body of the appellant's Petition for Post-Conviction Relief and or the grounds presented for relief thereof."

{¶ 9} In appellant's first assignment of error, he argues that the trial court erred by denying his petition for postconviction relief where he claimed he was denied the effective assistance of counsel. Specifically, appellant argues that his counsel induced him to enter a plea to a charge not supported by sufficient evidence. Appellant contends that his counsel failed to investigate the facts alleged and failed to advocate for his client.

{¶ 10} The postconviction statute, R.C. 2953.21, provides, in part:

{¶ 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, \* \* \* 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} We first note that an appellate court reviews a ruling on a postconviction petition for an abuse of discretion. *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679. An abuse of discretion is found only when it is determined that a trial court's attitude in reaching its judgment was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 13} The purpose of the postconviction proceeding is to review constitutional issues that could not have otherwise been reviewed because they were not included in the record of the trial court proceedings. The doctrine of res judicata, however, prevents appellants from asserting issues in postconviction proceedings that were raised or could have been raised on direct appeal. *State v. Szefcyk* (1996), 77 Ohio St.3d 93, 96; *State v. Perry* (1967), 10 Ohio St.2d 175, paragraphs seven and nine of the syllabus. The doctrine applies even though no direct appeal was filed. See *State v. Wooten*, 6th Dist. No. L-01-1501, 2002-Ohio-4949, ¶ 6, citing *State v. Walls* (Aug. 20, 1999), 2d Dist. No. 99CA9.

{¶ 14} Appellant argues that his counsel induced him to enter his plea. However, in the trial court appellant failed to produce any evidence from outside the record to demonstrate his claims. Appellant had knowledge of the alleged deficiencies and should have raised the arguments on direct appeal. Further, although appellant did attach some evidentiary materials to his brief in this court, these materials may not be considered in

this appeal because they were not before the trial court when it ruled on the postconviction relief petition and are not part of the record. See *State v. Ishmail* (1978), 54 Ohio St.2d 402, paragraph one of the syllabus.

{¶ 15} Though we find that appellant's ineffective assistance of counsel claim is barred by res judicata, we further note that even a cursory review of the claim shows that it lacks merit. Trial counsel succeeded in reducing the charge from abduction, a third degree felony with a possible prison sentence of five years, to attempted abduction, a fourth degree felony. Appellant was then sentenced to five years of community control.

{¶ 16} Based on the foregoing, we find that the trial court did not abuse its discretion when it denied appellant's petition for postconviction relief. Appellant's first assignment of error is not well-taken.

{¶ 17} In appellant's second assignment of error, appellant appears to argue that the trial court erred by summarily dismissing the claim without first conducting a hearing. Appellant asserts that, at the plea hearing when he was asked whether he was satisfied with his counsel, he first stated "I don't know" but that the court required a yes or no answer. Appellant admits that this is not in the transcribed version of the hearing but that an audio recording, though not available, would have demonstrated his response.

{¶ 18} We note that a hearing on a postconviction relief petition is not required where the record reveals that the petitioner is not entitled to relief and that the petitioner failed to submit evidentiary documents, outside the record, containing sufficient operative

facts to demonstrate that substantive grounds for relief exist. R.C. 2953.21(C); *State v. Kapper* (1983), 5 Ohio St.3d 36, 38.

{¶ 19} Based on our disposition of appellant's first assignment of error, we must conclude that the trial court did not err by denying appellant's petition without first conducting a hearing. Appellant failed to provide substantive grounds for relief as required under R.C. 2953.21(C). Appellant's second assignment of error is not well-taken.

{¶ 20} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the 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.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, P.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:  
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