

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

State of Ohio

Court of Appeals No. S-11-042

Appellee

Trial Court No. 00 CR 199

v.

Manuel Sandoval, Jr.

DECISION AND JUDGMENT

Appellant

Decided: December 7, 2012

* * * * *

Manuel Sandoval, Jr., pro se.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the February 1, 2011 judgment of the Sandusky County Court of Common Pleas, which denied appellant's motion for postconviction relief.

Upon consideration of the assignments of error, we affirm the decision of the lower court.

Appellant, Manuel Sandoval Jr., asserts the following assignments of error on appeal:

ASSIGNMENT OF ERROR NO. I

The Trial Court Committed An Error of Law By Not Including In Its Ruling The Conclusions of Law And Findings of Fact As Required By Ohio Criminal Rule 35(c) And Ohio Statute R.C. 2953.21(5)(g).

ASSIGNMENT OF ERROR NO. II

The Trial Court Erred When It Failed To Hold An Evidentiary Hearing On Appellant's Post Conviction Petition.

{¶ 2} Appellant was convicted and sentenced for murder in 2000 and this judgment was affirmed on appeal. *State v. Sandoval*, 6th Dist. No. S-00-042, 2002 WL 398331 (Mar. 15, 2002). Appellant moved for leave to file a motion for a new trial in 2005, which was denied by the trial court on January 7, 2011, and that decision was affirmed on appeal. *State v. Sandoval*, 6th Dist. Nos. S-11-006, S-11-013, 2012-Ohio-1117.

{¶ 3} Appellant filed an untimely postconviction relief petition on January 28, 2011, pursuant to R.C. 2953.23(A)(1), arguing that his counsel rendered ineffective assistance of counsel and that there had been prosecutorial misconduct during his trial. He asserts that he demonstrated good cause for delay in filing his petition. The trial court denied the petition on February 1, 2011, without a hearing and without setting forth a basis. Appellant sought an appeal from that decision on October 13, 2011.

{¶ 4} In his first assignment of error, appellant argues that the trial court erred by denying his petition and erred by failing to set forth a basis for the denial. Appellant contends that the judgment fails to comply with Crim.R. 35(C).

{¶ 5} R.C. 2953.23(A) provides that a postconviction relief petition can be filed beyond the 180-day filing deadline set by R.C. 2953.21(A)(2) if the petitioner can show that he was unavoidably prevented from discovery of the facts upon which the claim for relief is based and but for the constitutional errors, no reasonable factfinder would have found petitioner guilty. R.C. 2953.23(A)(1)(a) and (b).

{¶ 6} On appeal, we review the trial court's decision regarding the timeliness of appellant's petition with the same standard of review used for reviewing the trial court's ruling on the merits of the petition. Both issues require a mixed standard of review. The factual issues are reviewed with a manifest weight of the evidence standard of review and the legal issues are reviewed with a de novo standard of review. *State v. McDonald*, 6th Dist. No. E-04-009, 2005-Ohio-798, ¶ 20.

{¶ 7} Appellant alleged that he was unavoidably prevented from filing his petition for several reasons. First, his trial counsel hindered appellant from discovering the error by refusing to turn over discovered evidence. Two days after appellant's conviction, his counsel visited appellant and informed him that a private investigator had discovered that the police had allowed a prosecution witness to enter the victim's home to retrieve videotapes. Appellant's counsel indicated that he would file a motion for a new trial because the prosecution withheld evidence material to the defense. However, appellant's

counsel never filed the motion. Appellant sought to obtain the evidence from his counsel and sought help from other organizations but was never able to obtain the evidence.

{¶ 8} We find that these allegations do not justify appellant's delayed petition. He has known that this evidence existed since 2000. Even though he asserts his appointed counsel failed to file a motion for new trial and he has been unable to get anyone to assist him in obtaining this evidence, he fails to explain how he was unable to file this petition within the 180-day time period but was able to file it 11 years later. Furthermore, as we noted in the original appeal of this case, there was overwhelming evidence of appellant's guilt in this case, including appellant's taped confession and a blood sample match. *Sandoval*, 6th Dist. No. S-00-042, 2002 WL 398331, at *4. Therefore, we find appellant has failed to satisfy either part of the R.C. 2953.23(A) test with regard to this allegation.

{¶ 9} The second allegation appellant made to justify his delayed petition is that he did not know that his former spouse, Heather Sandoval, had been pressured and intimidated by the prosecution and police into giving false testimony until she provided appellant with an affidavit in 2005 attesting to this fact. Even if this affidavit would have been sufficient to establish a late discovery of a potential error in 2005, it does not excuse the filing of the petition an additional six years after the day he received the affidavit. Furthermore, even if we found that this allegation met the first part of the delayed filing test, it fails the second part. In his direct appeal, we specifically held that the trial court erred in admitting the testimony of Heather Sandoval but that the error was harmless

because of the overwhelming evidence against appellant. *Id.* Therefore, appellant has also failed to justify his delayed petition with regard to this allegation.

{¶ 10} Finally, appellant contends that the trial court erred by failing to issue findings of fact and conclusions of law in its judgment denying his petition for postconviction relief. We find this argument lacks merit. The requirement under R.C. 2953.21(G) that a trial court file findings of fact and conclusions of law when a court denies a petition for postconviction relief is not applicable to the trial court's rejection of an untimely petition for postconviction relief under R.C. 2953.23. *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, citing *State ex rel. Reynolds v. Basinger*, 99 Ohio St.3d 303, 2003-Ohio-3631, 791 N.E.2d 459, ¶ 7. Therefore, appellant's first assignment of error is not well-taken.

{¶ 11} In his second assignment of error, appellant argues that he was entitled to an evidentiary hearing on his motion for postconviction relief. We disagree. The determination of whether to grant a hearing with regard to the filing of a delayed postconviction relief petition is a matter of discretion for the trial court. R.C. 2953.23(A). Appellant has failed to demonstrate that the trial court abused its discretion. Therefore, appellant's second assignment of error is not well-taken.

{¶ 12} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Sandusky County Court of Common Pleas is affirmed. Appellant is ordered to 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, 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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.