

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

State of Ohio

Court of Appeals No. WD-12-067

Appellee

Trial Court No. 2007CR0215

v.

Scott Rodriguez

DECISION AND JUDGMENT

Appellant

Decided: December 30, 2013

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney,
Gwen Howe-Gebers, Chief Assistant Prosecuting Attorney,
and David E. Romaker, Jr., Assistant Prosecuting Attorney,
for appellee.

Scott Rodriguez, pro se.

* * * * *

SINGER, P.J.

{¶ 1} This appeal is from a judgment of the Wood County Court of Common Pleas denying appellant, Scott Rodriguez' motion for postconviction relief. Upon consideration of the assignments of error, we affirm the decision of the lower court.

{¶ 2} Appellant was convicted of trafficking in marijuana in 2007. He was sentenced to serve eight years in prison. This court affirmed his conviction in 2009. *State v. Rodriguez*, 6th Dist. Wood No. WD-08-011, 2009-Ohio-4059.

{¶ 3} On October 31, 2012, appellant filed a motion for postconviction relief. On November 7, 2012, the trial court denied appellant's motion for being untimely.

Appellant now appeals setting forth the following assignments of error:

I. The state of Ohio abused its discretion by failing to provide exculpatory evidence that was favorable to appellant.

II. Trial court abused its discretion due its failure to review the evidence and make a complete finding of fact.

{¶ 4} Appellant's assignments of error will be considered together.

{¶ 5} A petition for postconviction relief "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." R.C. 2953.21(A)(2). Here, the trial transcript was filed in 2008.

{¶ 6} "A trial court has no jurisdiction to consider an untimely petition for postconviction relief unless the untimeliness is excused under R.C. 2953.23(A)(1)."

State v. Guevara, 6th Dist. Lucas No. L-12-1218, 2013-Ohio-728, ¶ 8. Under R.C. 2953.23(A)(1), the time limit is excused if both (1) it can be shown that either the petitioner was unavoidably prevented from discovering the facts relied on in the claim for relief, or that 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; and (2) the petitioner presents clear and convincing evidence that, but for the constitutional error at trial, no reasonable fact-finder would have found the petitioner guilty.

{¶ 7} The denial of a postconviction petition will not be overturned on appeal absent a finding of abuse of discretion. *State v. Williams*, 165 Ohio App.3d 594, 2006-Ohio-617, 847 N.E.2d 495 (11th Dist.). An abuse of discretion connotes more than a mere error of law or judgment, instead requiring a finding that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 8} Appellant contends that he was unavoidably prevented from discovering audiotapes, as well as a supplemental police report, that allegedly cast doubt on the initial stop of the vehicle in which appellant was a passenger. Specifically, appellant contends that the tapes contain a statement by a co-defendant, Luis Melendez, that he was the only one involved in the illegal drug transaction. Appellant claims that this statement exonerates him.

{¶ 9} However, we find that the trial court did not abuse its discretion in denying appellant's untimely postconviction petition. First, other than accusing the state of "maliciously" withholding evidence, appellant has not shown that he was unavoidably prevented from obtaining the tapes and the supplemental police report at his trial. Even if appellant was able to show that he was unavoidably prevented from discovering the

statement, the information in no way exonerates appellant. At trial, there was substantial evidence of appellant's involvement in the crime presented, which included the testimony of Melendez. Therefore, we cannot say that a reasonable factfinder would have been prevented from finding him guilty had the tapes and supplemental police report been admitted into evidence. Accordingly, appellant's two assignments of error are found not well-taken.

{¶ 10} On consideration whereof, the judgment of the Wood 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.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, 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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