

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

State of Ohio

Court of Appeals No. E-13-053

Appellee

Trial Court No. 93-CR-268

v.

Sean A. Hayes

**DECISION AND JUDGMENT**

Appellant

Decided: March 28, 2014

\* \* \* \* \*

Kevin J. Baxter, Erie County Prosecuting Attorney, Mary Ann Barylski and Frank Romeo Zeleznikar, Assistant Prosecuting Attorneys, for appellee.

Sean A. Hayes, pro se.

\* \* \* \* \*

**SINGER, J.**

{¶ 1} Appellant appeals the judgment of the Erie County Court of Common Pleas, dismissing his “Motion to Correct a Void and Facially Illegal Sentence.” Because his motion was an untimely petition for postconviction relief, we affirm.

{¶ 2} In 1994, appellant, Sean A. Hayes, pled guilty to aggravated murder, aggravated arson and felonious assault in the 1993 death of Shawn Jones. The trial court accepted his plea and sentenced him to consecutive terms of imprisonment of 20 years to life for the aggravated murder, 10 to 25 years for the aggravated arson and five to 15 years for the felonious assault. He did not appeal. His subsequent motions for delayed appeal and to withdraw his guilty plea were denied. He is presently incarcerated.

{¶ 3} In 2013, appellant filed a motion to correct his sentence, arguing that the offenses for which he was convicted were allied offenses arising out of the same act or transaction and should have been merged pursuant to R.C. 2941.25(A). At least, appellant insists, the court should have held a hearing on the issue.

{¶ 4} The state responded, moving for summary judgment. The state argued that irrespective of the caption of appellant's motion, it was in fact a petition for postconviction relief. As such, the motion was untimely pursuant to R.C. 2953.21(A)(2) and did not satisfy any of the criteria to establish an exception for filing outside the statutory time period. Alternatively, the state argued, the issue is one that could have been raised on direct appeal and its consideration is thus barred by the doctrine of res judicata.

{¶ 5} When the trial court granted the state's motion for summary judgment, appellant appealed. Appellant sets forth three assignments of error:

I. The trial court erred when it incorrectly categorized appellant's motion to correct a void and facially illegal sentence as a petition for postconviction relief.

II. The trial court erred when it failed to hold a hearing to determine if appellant's sentence was void and facially illegal.

III. The trial court erred when it failed to exercise its jurisdiction to correct a void and facially illegal sentence.

{¶ 6} A motion to correct or vacate a sentence is a petition for postconviction relief irrespective of its caption. *State v. Reynolds*, 79 Ohio St.3d 158, 160, 679 N.E.2d 1131 (1997). Issues that could have been raised on direct appeal are barred from consideration in a motion for postconviction relief by the doctrine of res judicata. *Id.*, citing *State v. Duling*, 21 Ohio St.2d 12, 254 N.E.2d 670 (1970), *rev'd on other grounds*, *Duling v Ohio*, 408 U.S. 936, 92 S.Ct. 2861, 33 L.Ed.2d 753 (1972). Moreover, a petition for postconviction relief must be filed no later than 180 days after the expiration of the time for filing an appeal, R.C. 2953.21(A)(2), absent specific exceptions not present here. *See* R.C. 2953.23(A).

{¶ 7} Appellant's motion was a petition for postconviction relief. Appellant's first assignment of error is not well-taken. It was filed nearly two decades out of time and raised issues that could have been raised on an original appeal. Consequently, the trial court committed no error by declining to consider it on the merits. Appellant's second and third assignments of error are not well-taken.

{¶ 8} On consideration, the judgment of the Erie 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, J.

Stephen A. Yarbrough, P.J.

James D. Jensen, J.  
CONCUR.

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JUDGE

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JUDGE

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JUDGE

<p>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: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
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