

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

State of Ohio

Court of Appeals No. WD-13-049

Appellee

Trial Court No. 2012CR0018

v.

John E. Thomas

**DECISION AND JUDGMENT**

Appellant

Decided: April 11, 2014

\* \* \* \* \*

Paul A. Dobson, Wood County Prosecuting Attorney, and  
David E. Romaker, Jr., Assistant Prosecuting Attorney, for appellee.

John E. Thomas, pro se.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This is a pro se accelerated appeal from a judgment of the Wood County Court of Common Pleas that denied appellant's untimely-filed petition for postconviction relief. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant was convicted of one count of disrupting public services, a felony of the fourth degree, following trial to a jury and sentenced on May 4, 2012, to a term of 18 months incarceration. On June 12, 2013, appellant filed in the trial court a petition for postconviction relief. By judgment entry filed June 27, 2013, the trial court denied appellant's petition for being untimely filed. On July 11, 2013, appellant filed this timely appeal.

{¶ 3} Appellant sets forth the following sole assignment of error:

The trial court abused its discretion when it denied the defendant's post conviction petition and failed to hold an evidential hearing or give proper findings of facts and conclusions of law in considering a petition filed under R.C. § 2953.23.

{¶ 4} An evidentiary hearing is not automatically guaranteed upon filing a petition for postconviction relief. To be entitled to a hearing, the petition must set forth substantive grounds for relief that would warrant a hearing based upon the petition, supporting affidavits and the record. *State v. Watson*, 126 Ohio App.3d 316, 324, 710 N.E.2d 340 (12th Dist.1998). *See also* R.C. 2953.21(C). The trial court's denial of a postconviction petition without a hearing is reviewed pursuant to an abuse of discretion standard. *Watson, supra*. An abuse of discretion requires more than an error of law or judgment; it implies that the trial court's judgment was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). Further, in the interest of providing finality to judgments of conviction, courts

construe the postconviction relief allowed under R.C. 2953.21(A)(1) narrowly. *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 47.

{¶ 5} R.C. 2953.21(A)(2) states that, except as otherwise provided in R.C. 2953.23, a petition filed under R.C. 2953.21(A)(1) “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 \* \* \*.” Accordingly, the petition in this matter should have been filed in January 2013, as the trial transcript was filed in this court on July 5, 2012. Appellant’s petition was not filed until June 12, 2013, nearly six months late.

{¶ 6} R.C. 2953.23 states that a court may not entertain a petition filed after the expiration period set forth in R.C. 2953.21(A)(2) unless division (A)(1) or (A)(2) applies. Based on the law as applied to this case, we find that none of the statutory provisions permitting the late filing of such a petition apply in this matter. Most notably, appellant has not shown how he was unavoidably prevented from pre-trial discovery of certain cell phone records which he asserts establish his innocence. *See* R.C. 2953.23(A)(1)(a). Because appellant has not shown that he was unavoidably prevented from discovery of the telephone records upon which he must rely to present his claim, the trial court was not required to address additional factors as set forth in R.C. 2953.23(A)(1). Further, division (A)(2) of R.C. 2953.23 clearly does not apply here, as appellant has made no claim that DNA testing might establish his innocence.

{¶ 7} Based on the foregoing, we find that the trial court was thorough in its analysis and did not abuse its discretion in denying appellant's petition for postconviction relief without a hearing. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 8} On consideration whereof, the judgment of the Wood County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant 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.

Mark L. Pietrykowski, J.

Thomas J. Osowik, J.

Stephen A. Yarbrough, P.J.  
CONCUR.

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JUDGE

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| <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:<br/><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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