

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

State of Ohio

Court of Appeals No. L-13-1210

Appellee

Trial Court No. CR0200603339

v.

Robert Wilson

DECISION AND JUDGMENT

Appellant

Decided: March 28, 2014

* * * * *

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

Robert Wilson, pro se.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} Appellant, Robert Wilson, appeals the judgment of the Lucas County Court of Common Pleas, denying his motion for postconviction relief. We affirm.

A. Facts and Procedural Background

{¶ 2} In *State v. Wilson*, 6th Dist. Lucas No. L-08-1380, 2010-Ohio-2247, this court previously set forth the following facts relevant to this appeal:

In 1993, Brenda Navarre served as a confidential informant for the Toledo Police Department's Vice Narcotics Unit. Navarre was cooperating with Detective William Seymour. Seymour was investigating appellant for suspected drug trafficking. Over the course of several months, Navarre made three "direct buys" of crack cocaine from appellant. * * *

Subsequent to the multiple undercover crack purchases between Navarre and appellant, appellant was indicted for his drug trafficking activity.

In late November 1993, Seymour received an urgent phone call from Navarre. She was described as "very frantic" and was "crying and hysterical." On December 1, 1993, Navarre's body was discovered on a city sidewalk. She was unresponsive and bleeding from a severe head injury. A bloody, 110-pound boulder was found nearby. Navarre was rushed to a hospital for emergency treatment. Navarre died from her injuries several days later.

Examination by the medical examiner revealed that Navarre's death was caused by numerous injuries to her body, including multiple, severe fractures about the face and skull. The medical examiner found that these injuries were consistent with multiple blunt force traumas and being struck

in the head with a boulder. After going unsolved for a period of time, the case was eventually categorized as a “cold case.”

In June 2005, Sergeant Lou Vasquez of the Toledo Police Department was investigating a robbery. The victim was the grandson of Janet Wilson who, coincidentally, had been married to appellant since 1992. After the robbery investigation’s conclusion, Wilson contacted and spoke to Sergeant Vasquez on numerous occasions pertaining to her knowledge of Brenda Navarre’s death. She continued to have numerous conversations regarding Navarre over the next year. Wilson finally agreed to make a formal statement detailing what she knew about the death in August 2006.

After Wilson’s statement, Detective Bart Beavers of the Toledo Police Department’s Cold Case Unit reopened the Navarre case. He spoke to Wilson on at least seven or eight instances regarding Navarre’s death. After further investigation, Detective Beavers discovered that the case was originally recorded as a felonious assault and had not been updated to a homicide after Navarre died from her injuries. Due to this miscategorization, the physical evidence relating to the case, including the bloody boulder, was destroyed after the statute of limitations on felonious assaults had run. *Id.* at ¶ 12-16.

{¶ 3} Notwithstanding the missing evidence, appellant was subsequently indicted on one count of murder in violation of R.C. 2903.02(A). Following a jury trial, appellant was found guilty, and sentenced to a term of imprisonment of 15 years to life. On October 23, 2008, appellant filed a timely notice of appeal. Transcripts of the trial proceedings were filed with this court on December 2, 2008. Thereafter, on June 12, 2009, appellant supplemented the record by filing additional transcripts of two pretrial hearings.

{¶ 4} On direct appeal, appellant argued, inter alia, that his due process rights were violated via the state's failure to retain certain physical evidence following the expiration of the felonious assault statute of limitations. After reviewing the record in its entirety, we were unable to find any reversible error in the trial proceedings. With regard to appellant's argument that his due process rights were violated by the state's destruction of physical evidence, we concluded that the discarded evidence was not materially exculpatory. Accordingly, we affirmed the trial court's judgment.

{¶ 5} On November 18, 2009, while appellant's appeal was pending before this court, appellant filed a "motion to vacate or set aside judgment of conviction or sentence" with the trial court. In his motion, which was essentially a petition for postconviction relief, appellant argued that the state failed to comply with its discovery obligations under Crim.R. 16(D), and that he was deprived of a fair trial as a result of the state's destruction of physical evidence. The trial court ultimately denied appellant's request for postconviction relief on April 29, 2011, eleven months after we released our decision in

Wilson, supra. The court reasoned that the motion was untimely since it was filed more than 180 days after the trial transcripts were filed in this court. Appellant has timely appealed the trial court's denial of his postconviction motion.

B. Assignments of Error

{¶ 6} On appeal, appellant asserts the following assignments of error:

Assignment of Error I: The trial court erred [in] finding that Mr. Wilson's petition for postconviction relief was filed outside of the 180-day time limit and further erred [in] finding that [the] petition failed to raise any meritorious issues or present evidence of a denial * * * of rights under the Ohio and United States Constitution.

Assignment of Error II: Due Process of Law violations occurred when material exculpatory evidence was not preserved.

Assignment of Error III: Due Process of Law violations occurred when material exculpatory evidence was not preserved.

II. Analysis

{¶ 7} In his first assignment of error, appellant argues that the trial court erroneously concluded that his petition for postconviction relief was untimely. He argues that the applicable 180-day time limit did not begin to run until he filed his supplemental pretrial transcripts on June 12, 2009. In response, the state contends that the trial court properly denied appellant's motion because it was filed more than 180 days after the initial transcripts were filed.

{¶ 8} A trial court’s decision to deny a petition for postconviction relief involves mixed questions of law and fact. We review the trial court’s decision on factual issues using a manifest weight standard of review, and we review the trial court’s decision on legal issues de novo. *State v. Hoffner*, 6th Dist. Lucas No. L-01-1281, 2002-Ohio-5201, ¶ 6.

{¶ 9} As relevant here, R.C. 2953.21(A)(2) provides that postconviction petitions must “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 or adjudication.” (Emphasis added.)

{¶ 10} In his appellate brief, appellant highlights the dispositive issues, namely whether “the 180-day time limitation begin[s] to run from December 3, 2008 (trial transcripts) or June 12, 2009 (pre-trial transcripts).” Notably, Ohio courts have previously resolved this issue by concluding that the 180-day period may not be extended by filing “irrelevant transcripts of pretrial hearings months after the filing of [the] trial transcript.” *State v. Chavis-Tucker*, 10th Dist. Franklin No. 05AP-974, 2006-Ohio-3105, ¶ 8. Rather, the relevant date from which the time period begins to run is the date on which appellant files the transcripts from the actual trial. *Id.* Because appellant filed his petition for postconviction relief over eleven months after he filed the trial transcripts with this court, the petition was untimely.

{¶ 11} Where the petition is untimely filed, the trial court lacks jurisdiction to entertain the matter unless the petitioner demonstrates that one of the exceptions

contained in R.C. 2953.23(A) applies. Untimeliness may be excused under the following three scenarios: (1) where the petitioner shows that he or she was “unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief;” (2) where, subsequent to the 180-day period, “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;” or (3) where the petitioner is shown to be innocent of the crime for which the petitioner was found guilty by virtue of DNA testing. R.C. 2953.23(A).

{¶ 12} Here, appellant does not allege that any of the above-referenced exceptions apply. Specifically, he makes no claim that he was unavoidably prevented from discovering facts relevant to his defense. Further, his petition is not based on any new federal or state right that would apply retroactively to him. Finally, appellant does not claim that he is entitled to relief based on exculpatory DNA testing. Having failed to establish any of the applicable exceptions, we conclude that the trial court properly denied appellant’s petition for postconviction relief filed beyond the 180-day time limit.

{¶ 13} Accordingly, appellant’s first assignment of error is not well-taken. Moreover, because the trial court properly denied the petition on timeliness grounds, appellant’s second and third assignments of error, concerning the merits of the petition, are moot.

III. Conclusion

{¶ 14} For the foregoing reasons, 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.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, 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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