

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

State of Ohio

Court of Appeals Nos. L-15-1098
L-15-1101

Appellee

Trial Court No. CR0199902160

v.

Karl Willis & Wayne Braddy

DECISION AND JUDGMENT

Appellants

Decided: January 29, 2016

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Jennifer Paschen Bergeron and Mark Godsey, for appellant
Karl Willis.

Michele L. Berry, for appellant Wayne Braddy.

* * * * *

SINGER, J.

{¶ 1} This consolidated appeal comes to us from the Lucas County Court of
Common Pleas wherein the court denied appellants, Karl Willis and Wayne Braddy's,
petitions for postconviction relief. For the reasons that follow, we affirm.

{¶ 2} In 1999, following a joint trial before a jury, appellants were each convicted of aggravated murder and aggravated robbery, with firearm specifications. Both were sentenced to life with parole eligibility after 20 years for aggravated murder, 10 years as to the aggravated robbery offense, to run concurrently with the aggravated murder sentence, and 3 years mandatory consecutive term for the firearm specifications (the two specifications merged). All convictions were affirmed by this court in 2001. *State v. Braddy*, 6th Dist. Lucas. No. L-00-1049, 2001 WL 108742 (Feb. 9, 2001), and *State v. Willis*, 6th Dist. No. L-00-1041, 2001 WL 201316 (Mar. 2, 2001).

{¶ 3} On March 18, 2013, appellants filed petitions for postconviction relief which were denied on March 18, 2015. Appellants now appeal setting forth the following assignment of error:

I. The trial court erred when it held that there is no cognizable claim for relief for a petition for post-conviction relief based on actual innocence.

Postconviction Relief

{¶ 4} R.C. 2953.21 provides:

Any person who has been convicted of a criminal offense * * * who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States, and any person who has been convicted of a criminal offense that is a felony and who is an offender for whom DNA testing that was performed under sections 2953.71 to 2953.81 of the

Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the person's case as described in division (D) of section 2953.74 of the Revised Code provided results that establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death, may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. The petitioner may file a supporting affidavit and other documentary evidence in support of the claim for relief.

{¶ 5} The purpose of Ohio's postconviction relief statute is to afford criminal defendants with a method by which they may raise claims of denial of federal rights. *State v. Calhoun*, 86 Ohio St.3d 279, 281, 714 N.E.2d 905 (1999), citing *Young v. Ragen*, 337 U.S. 235, 239, 69 S.Ct. 1073, 93 L.Ed. 1333 (1949). A petition for postconviction relief does not, however, permit a defendant a second opportunity to litigate his conviction or argue issues that could have been or were previously raised. *State v. Hendrix*, 11th Dist. Lake No. 2012-L-080, 2013-Ohio-638.

{¶ 6} In postconviction matters, a trial court is the gatekeeper regarding whether a defendant should receive a hearing. *State v. Gondor*, 112 Ohio St.3d 377, 860 N.E.2d 77, 2006-Ohio-6679, ¶ 51. A court is not required to hold a hearing unless the petitioner advances evidence demonstrating a cognizable claim of constitutional error. R.C. 2953.21(C); *see also State v. Adams*, 11th Dist. Trumbull No. 2003-T-0064, 2005-Ohio-348, ¶ 36. In other words, a petitioner must put forth evidence that “there was such a denial or infringement of the person’s rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States * * *.” R.C. 2953.21(A)(1)(a).

{¶ 7} “Pursuant to R.C. 2953.21(C), a defendant’s petition may be denied without a hearing when the petition, supporting affidavits, documentary evidence, files, and records do not demonstrate that the petitioner set forth sufficient operative facts to establish substantive grounds for relief.” *Adams, supra*, citing *Calhoun* at 281. Generally, an appellate court reviews the dismissal of a petition for postconviction relief for an abuse of discretion. *State v. Hendrix, supra*. If, however, a trial court denies a petition by operation of law, e.g., by application of the doctrine of res judicata, this court’s review is de novo. *State v. Butcher*, 11th Dist. Portage No. 2013-P-0090, 2014-Ohio-4302, ¶ 6.

{¶ 8} R.C. 2953.21(A)(2) governs the time within a petition for postconviction relief must be filed and provides as follows:

Except as otherwise provided in section 2953.23 of the Revised Code, a petition under division (A)(1) of this section shall be filed no later

than three hundred sixty five 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 * * *.

{¶ 9} As appellants' direct appeals were completed in 2001, their petitions are clearly untimely. However, pursuant to R.C. 2953.23(A), the court may consider an untimely petition for postconviction relief:

(A) Whether a hearing is or is not held on a petition filed pursuant to section 2953.21 of the Revised Code, a court may not entertain a petition filed after the expiration of the period prescribed in division (A) of that section * * * unless division (A)(1) or (2) of this section applies:

(1) Both of the following apply:

(a) Either the petitioner shows that the petitioner was unavoidably prevented from the discovery of the facts upon which the petitioner must rely to present the claim for relief, or, subsequent to the period prescribed in division (A)(2) of section 2953.21 of the Revised Code or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to the petitioner's situation, and the petition asserts a claim based on that right.

(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found

that petitioner was guilty of the offense of which the petitioner was convicted of * * *.

(20 The petitioner was convicted of a felony, the petitioner is an offender for whom DNA testing was performed * * * and analyzed in the context of and upon consideration upon all available admissible evidence related of the inmate's case * * * and the results of the DNA testing establish, by clear and convincing evidence, actual innocence of that felony offense * * *.

Appellants' Petitions

{¶ 10} Appellants filed untimely postconviction relief petitions arguing that pursuant to R.C. 2953.23(A)(1), they were unavoidably prevented from discovering the facts upon which they must rely to present their claim for relief, and clear and convincing evidence shows that, but for constitutional error at trial, no reasonable factfinder would have found them guilty. Appellants claimed that they are innocent and thus, their convictions amount to an R.C. 2953.23 "constitutional error."

{¶ 11} Appellants submitted documents and affidavits in support of their petitions. One affidavit they offered was from Travis Slaughter. At appellants' 1999 trial, Slaughter testified that he, along with appellants, murdered 13-year-old Maurice Purifie. In a 2002 affidavit, Slaughter stated that neither appellant was present when Purifie was murdered and that neither appellant had any knowledge of the crimes of which they were convicted. Slaughter stated that he falsely testified against appellants in an effort to gain

a reduced prison sentence. This same affidavit was submitted in support of appellant Willis' motion for a new trial filed in 2006. The motion was denied by the trial court.

{¶ 12} Appellants also offered a document entitled "[D]eclaration of Shondrea Rayford." In the 2012 document, Rayford explains that in 1998, she lied to a courthouse victim's advocate, on Slaughter's behalf, when she told her that appellants were involved in the murder of Purifie. Specifically, she falsely told the advocate that she heard appellants confess to their involvement. When she was called to testify at appellants' trial, she only gave her name and age. She refused to answer any other questions because she was "fearful of being caught up in the lies." Consequently, she was found in contempt of court and sentenced to 30 days in jail. She stated in her declaration that she is coming forward now because she has matured since the murder and she does not want to see innocent people in jail.

{¶ 13} Appellants offered their own affidavits and affidavits of others, providing alibis for the night of the murder and their theory as to why Slaughter would falsely implicate them. Finally, appellants submitted letters supposedly written to them by Slaughter while he was in prison. Appellants have not provided any DNA evidence to support their claims of actual innocence pursuant to R.C. 2953.23(A)(2).

{¶ 14} In denying the petitions, the court found that a freestanding claim of innocence is insufficient as a matter of law to warrant postconviction relief. Appellants now ask us to find that appellants' innocence alone, pursuant to R.C. 2953.23(A)(1)(b), entitles them to postconviction relief.

{¶ 15} In *Herrera v. Collins*, 506 U.S. 390, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993), the United States Supreme Court held that “a claim of ‘actual innocence’ is not itself a constitutional claim.” *Id.* at 404. “[A] claim of ‘actual innocence’ is not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits.” Nevertheless, the court was willing to “assume, for the sake of argument in deciding [the] case, that a truly persuasive demonstration of ‘actual innocence’ made after trial would render the execution of a defendant unconstitutional, and warrant federal habeas relief if there were no state avenue open to process such a claim.” *Id.*

{¶ 16} Interpreting *Herrera, supra*, the First District Court of Appeals held that a petitioner was not entitled to postconviction relief unless he showed a violation of rights that were constitutional in dimension, which occurred at the time that the petitioner was tried and convicted. *State v. Campbell*, 1st. Dist. Hamilton No. C-950746, 1997 WL 5182 (Jan. 8, 1997). The court stated:

[N]ewly discovered evidence is, by definition, that “which the defendant could not with reasonable diligence have discovered and produced at trial.” Crim.R. 33(A)(6); * * * A claim of actual innocence based on newly discovered evidence will, therefore, not provide substantive grounds for postconviction relief, because “it does not, standing alone, demonstrate a constitutional violation in the proceedings that actually resulted in the conviction.” * * * Campbell’s claims of actual innocence

were thus not cognizable in a postconviction proceeding. Citing *State v. Powell*, 90 Ohio App.3d 260, 264, 629 N.E.2d 13 (1993).

{¶ 17} Other Ohio courts have similarly held that a claim of actual innocence does not constitute a substantive ground for postconviction relief. *State v. Bound*, 5th Dist. Guernsey No. 04 CA 8, 2004-Ohio-7097, *State v. Watson*, 126 Ohio App.3d 316, 323, 710 N.E.2d 340 (12th Dist.1998), *State v. Loza*, 12th Dist. Butler No. CA96-10-214, 1997 WL 634348 (Oct. 13, 1997).

{¶ 18} In *Watson, supra*, the court reasoned: “[S]ince the United States Supreme Court has not recognized actual innocence as a constitutional right, we also refuse to judicially create such a constitutional right.” *Watson* at 323.

{¶ 19} Following other Ohio courts, we too decline to recognize actual innocence as a cognizable claim for postconviction relief. Appellants’ sole assignment of error is found not well-taken.

{¶ 20} The judgments of the Lucas County Court of Common Pleas are affirmed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgments affirmed.

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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.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, 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>.