

[Cite as *State v. Smith*, 2002-Ohio-4042.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 81096

STATE OF OHIO,	:	ACCELERATED
	:	
Plaintiff-Appellee	:	
	:	JOURNAL ENTRY
vs.	:	AND
	:	OPINION
FRANKLIN SMITH, JR.,	:	
	:	
Defendant-Appellant	:	

DATE OF ANNOUNCEMENT OF DECISION	:	AUGUST 8, 2002
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CHARACTER OF PROCEEDING:	:	Civil appeal from
	:	Common Pleas Court
	:	Case Nos. CR-383227 and
	:	CR-383550

JUDGMENT	:	AFFIRMED.
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DATE OF JOURNALIZATION	:	
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APPEARANCES:

For plaintiff-appellee:	William D. Mason, Esq. Cuyahoga County Prosecutor BY: Steven L. Graines, Esq. Assistant County Prosecutor The Justice Center - 8 <sup>th</sup> Floor 1200 Ontario Street Cleveland, Ohio 44113
For defendant-appellant:	Franklin Smith, Jr., Pro Se Inmate No. A-387-417 Mansfield Correctional Institution P.O. Box 788 Mansfield, Ohio 44901

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MICHAEL J. CORRIGAN, J.:

{¶1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the record from the Cuyahoga County Court of Common Pleas and the briefs of counsel. R.C. 2953.21(A)(2) requires a petition for postconviction relief to be filed within one hundred eighty days of the date of the filing of the transcript in a direct appeal. The issue in this appeal is whether the court erred by dismissing petitioner Franklin Smith's petition for postconviction relief on grounds that he did not file it within the required time period.

{¶2} Smith filed the transcript of proceedings in his direct appeal on May 3, 2001. He did not file his petition for postconviction relief until December 21, 2001 – two hundred thirty-two days after he filed the transcript in his direct appeal. The court clearly lacked jurisdiction to consider the petition. See *State v. Halliwell* (1999), 134 Ohio App.3d 730, 734. The court's lack of jurisdiction renders moot Smith's remaining arguments. The assigned errors are overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MICHAEL J. CORRIGAN  
JUDGE

KENNETH A. ROCCO, P.J., and

JAMES D. SWEENEY, J., CONCUR.