

[Cite as *State v. Rackley*, 2015-Ohio-4504.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102962

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

STEVEN L. RACKLEY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-12-563955-A

BEFORE: Boyle, J., Kilbane, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: October 29, 2015

FOR APPELLANT

Steven L. Rackley, pro se
Inmate No. 641-397
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, Ohio 44030

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: Mary McGrath
Gregory J. Ochocki
Assistant County Prosecutors
Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶1} Defendant-appellant, Steven Rackley, appeals from a judgment denying his petition for postconviction relief. He raises seven assignments of error for our review:

1. The [appellant] was deprived due process under the Fifth and Fourteenth Amendment to the United States Constitution and Article 1, Section 16 of the Ohio Constitution when he was not afforded adequate notice of the charges against him.
2. [Appellant's] Sixth Amendment right to counsel in violation of the United States Constitution and Article 1, Section 10 of the Ohio Constitution, under Criminal Rule 44, when Shaker Hts. Municipal Court did not afford defendant with adequate representation, the Municipal Court gave defendant two days served for the contempt, but never released him, and was not afforded counsel during his critical stages of his indictment.
3. Fourteenth Amendment procedural Due Process was violated when the Court of Common Pleas accepted a guilty plea without having sufficient evidence to support the plea.
4. The appellant was denied the effective assistance guaranteed by the Sixth and Fourteenth Amendment's to the United States Constitution and article 1, section 10 of the Ohio Constitution.
5. The appellant was denied the effective assistance of counsel guaranteed by the Fifth Amendment to the United States Constitution, for an improper amendment to the indictment.
6. The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution, counsel was ineffective and showed prejudice for not dismissing for speedy trial violation an coerced waiver of constitutional right.
7. Counsel was ineffective for not motioning for an appeal on the [appellant's] behalf, which violated his Procedural Due Process Clause of the Fourteenth Amendment to the United States Constitution.

{¶2} Finding no merit to his appeal, we affirm.

A. Procedural History

{¶3} In July 2012, Rackley was indicted on six counts, including two counts of aggravated murder, two counts of aggravated robbery, one count of kidnapping, and one count of tampering with evidence. The date of the alleged offenses was November 8, 2006.

{¶4} In April 2013, Rackley pleaded guilty to an amended indictment of one count of involuntary manslaughter and one count of aggravated robbery. The remaining counts were nolle. The trial court sentenced him to 19 years in prison. Rackley did not directly appeal his convictions or sentence.

{¶5} In March 2014, Rackley moved to withdraw his plea, which the trial court denied. Rackley did not appeal this denial.

{¶6} In June 2014, Rackley moved for leave to file a delayed appeal. This court denied his motion, and the Ohio Supreme Court declined to accept jurisdiction.

{¶7} In July 2014, Rackley filed his first petition for postconviction relief (as a motion to vacate or set aside judgment of conviction or sentence). The trial court denied his motion. Rackley did not appeal this denial.

{¶8} In March 2015, Rackley filed his second petition for postconviction relief (as petition to vacate or set aside judgment of conviction or sentence). The trial court denied his motion. It is from this judgment that Rackley appeals.

B. Untimely and Successive Petition for Postconviction Relief

{¶9} A vaguely titled motion, including a motion to correct or vacate a judgment or sentence, may be construed as a petition for postconviction relief under R.C. 2953.21(A)(1) where (1) the motion was filed subsequent to a direct appeal, (2) claimed a denial of constitutional rights, (3) sought to render the judgment void, and (4) asked for a vacation of the judgment and sentence. *State v. Reynolds*, 79 Ohio St.3d 158, 160-161, 679 N.E.2d 1131 (1997). Rackley's motion meets these four requirements. Accordingly, we shall construe his petition to vacate or set aside judgment of conviction or sentence as a petition for postconviction relief. *See also State v. Meincke*, 8th Dist. Cuyahoga No. 96407, 2011-Ohio-6473.

{¶10} A defendant’s petition for postconviction relief is a collateral civil attack on his or her criminal conviction. *See State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 48. A defendant does not have a constitutional right to petition for postconviction relief; the only rights afforded to a defendant in a postconviction proceeding are those specifically granted by the legislature. *State v. Calhoun*, 86 Ohio St.3d 279, 281, 714 N.E.2d 905 (1999).

{¶11} In Ohio, R.C. 2953.21 through 2953.23 set forth the only means by which a convicted defendant may seek to have the trial court’s judgment or sentence vacated or set aside pursuant to a petition for postconviction relief. The statute affords relief from judgment where the petitioner’s rights in the proceedings that resulted in his conviction were denied to such an extent the conviction is rendered void or voidable under the Ohio or United States Constitutions. R.C. 2953.21(A); *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph four of the syllabus.

{¶12} R.C. 2953.21 was amended by Am.Sub.S.B. No. 4 (“S.B. 4”) on September 21, 1995. While former R.C. 2953.21 provided that a postconviction petition could be filed “at any time” after the petitioner’s conviction, the statute now provides that the petition must be filed within 180 days from the filing of the trial transcripts in the petitioner’s direct appeal or, if a direct appeal was not pursued, 180 days after the expiration of the time in which a direct appeal could have been filed. Thus, there are now strict time limits for seeking postconviction relief under R.C. 2953.21.

{¶13} Prior to S.B. 4, R.C. 2953.23(A) provided that “the court may, in its discretion and for good cause shown, entertain a second petition or successive petitions for similar relief on behalf of the petitioner based upon the same facts or on newly discovered evidence.” Under S.B. 4, the phrases in the former statute, “in its discretion and for good cause shown” and “upon the same

facts,” were replaced by a two-pronged test. Now, R.C. 2953.23(A)(1) allows a trial court to entertain an untimely or successive petition only if:

(1) the petitioner was unavoidably prevented from discovering the facts on which the petition is predicated, or (2) the United States Supreme Court has recognized a new federal or state right that applies retroactively to the petitioner and the petition asserts a claim based on that new right.

R.C. 2953.23(A)(1)(a). If the petitioner is able to satisfy one of these threshold conditions, he or she must then demonstrate that, but for the constitutional error at trial, no reasonable factfinder would have found him or her guilty of the offenses of which he or she was convicted. R.C. 2953.23(A)(1)(b).

{¶14} The time limit for filing a petition for postconviction relief is jurisdictional. *State v. Johns*, 8th Dist. Cuyahoga No. 93226, 2010-Ohio-162, ¶ 8. Unless a defendant makes the showings required by R.C. 2953.23(A), the trial court lacks jurisdiction to consider an untimely petition for postconviction relief. *State v. Thomas*, 8th Dist. Cuyahoga No. 99972, 2014-Ohio-1512, ¶ 8, citing *State v. Carter*, 2d Dist. Clark No. 03CA-11, 2003-Ohio-4838, ¶ 13.

{¶15} Here, Rackley did not file his motion until well beyond the 180 days after the expiration of the time to file his direct appeal. It was also his second petition as he filed one in July 2014 as well. Therefore, unless it appears from the record in this case that Rackley was unavoidably prevented from discovering facts upon which he relied in his petition, or the United States Supreme Court has recognized a new federal or state right that applies retroactively to Rackley, and that but for a constitutional error at trial, no reasonable factfinder would have found Rackley guilty, we are bound to conclude the trial court was without jurisdiction to consider his petition for postconviction relief.

C. Analysis

{¶16} After a thorough review of Rackley’s arguments and the record before us, we conclude that the trial court was without jurisdiction to hear his motion. First, Rackley cannot meet one of the threshold conditions, i.e., he does not claim that he was unavoidably prevented from discovering the facts upon which he relied in his petition, or that the United States Supreme Court has recognized a new federal or state right that applies retroactively to him. Accordingly, the trial court did not have jurisdiction to review Rackley’s petition.

{¶17} We further note, however, that even if he would have met one of the threshold conditions, he still could not have met the second prong of R.C. 2953.23(A)(1) — namely, that no reasonable factfinder would have found him guilty but for constitutional error at trial. R.C. 2953.23(A)(1)(b). Rackley pleaded guilty, and thus, R.C. 2953.23(A) does not apply. *See, e.g., State v. Moore*, 8th Dist. Cuyahoga No. 82734, 2003-Ohio-4819, ¶ 16 (“Appellant pled guilty to drug possession and no trial occurred; therefore, [R.C. 2953.23(A)] does not apply.”); *State v. Halliwell*, 134 Ohio App.3d 730, 735, 732 N.E.2d 405 (8th Dist.1999) (defendant could not satisfy the requirement that “but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted” where he was convicted “pursuant to his plea of guilty, not by reason of trial”); *State v. Hairston*, 10th Dist. Franklin No. 13AP-225, 2013-Ohio-3834, ¶ 8 (where appellant was convicted pursuant to his guilty plea, not a trial, “the exception found in R.C. 2953.23(A)(1) does not allow the trial court to consider appellant’s * * * petition”); *State v. Demyan*, 9th Dist. Lorain No. 11CA0100096, 2012-Ohio-3634, ¶ 4 (because defendant pleaded guilty instead of going to trial, he could not demonstrate that, “but for constitutional error at trial, no reasonable factfinder would have found [him] guilty”); *State v. Clark*, 5th Dist. Stark No. 2007 CA 00206, 2008-Ohio-194, ¶ 18 (appellant cannot satisfy the requirement that but for constitutional error no reasonable factfinder would have found the petitioner guilty of the offense at trial because appellant was convicted based on his

entry of a guilty plea to the charges in the indictment); *State v. Pough*, 11th Dist. Trumbull No. 2003-T-0129, 2004-Ohio-3933, ¶ 17 (“Where a petitioner’s conviction results from a guilty plea rather than trial, R.C. 2953.23(A)(1)(b) does not apply.”); *see also State v. Pepper*, 5th Dist. Ashland No. 13 COA 019, 2014-Ohio-364, ¶ 26 (“While we note appellant’s post-hearing memorandum references the post-conviction relief statutes, it is questionable that the ‘constitutional error at trial’ criterion of R.C. 2953.23(A)(1)(b) can be met where the defendant seeking PCR relief [sic] was convicted pursuant to a guilty plea, not as a result of a trial.”).

{¶18} Accordingly, the trial court did not err when it denied his untimely and successive petition for postconviction relief.

{¶19} Judgment affirmed.

It is ordered that appellee recover from appellant the 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.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR

