

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
Nos. 102930 and 103090

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

VS.

**ANDREY L. BRIDGES**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-13-574201-A

**BEFORE:** Blackmon, J., Kilbane, P.J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** December 24, 2015

**FOR APPELLANT**

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**ATTORNEYS FOR APPELLEE**

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By: T. Allan Regas  
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PATRICIA ANN BLACKMON, J.:

{¶1} Andrey L. Bridges (“Bridges”) appeals pro se from the trial court’s denial of his motion for a new trial and his motion to vacate or set aside judgment of conviction or sentence. Bridges assigns seven errors for our review.<sup>1</sup>

{¶2} On November 8, 2013, a jury found Bridges guilty of murder, felonious assault, tampering with evidence, and abuse of a corpse in relation to the death of Carl Acoff. Bridges was sentenced to an aggregate term of life in prison with the possibility of parole after 18 years and six months. Bridges’s convictions were affirmed on direct appeal. *State v. Bridges*, 8th Dist. Cuyahoga No. 100805, 2014-Ohio-4570. For a thorough recitation of the facts in this case, *see id.*; *State v. Bridges*, 8th Dist. Cuyahoga No. 100805, 2015-Ohio-1447 (denying Bridges’s application for reopening his appeal).

{¶3} While Bridges’s direct appeal was pending, the trial court denied his petition for postconviction relief. The court also issued findings of fact and conclusions of law, which detailed the reasons for the denial. Bridges appealed these rulings in two cases, both of which were dismissed for failure to file the record. *State v. Bridges*, 8th Dist. Cuyahoga Nos. 101938 (Oct. 1, 2014), and 101942 (Oct. 31, 2014).

{¶4} Subsequent to his convictions being affirmed on direct appeal, the trial court denied Bridges’s motion to vacate or set aside judgment of conviction or sentence and his motion for a new trial. Bridges now appeals these rulings in two cases, which we consolidated for review.

**Petition to Vacate or Set Aside Judgment of Conviction or Sentence**

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<sup>1</sup> See appendix.

{¶5} Pursuant to former R.C. 2953.21(A)(2), postconviction relief petitions shall be filed no later than 180 days after the trial transcript is filed in the direct appeal of the conviction at issue. The trial transcript in Bridges’s direct appeal was filed on February 27, 2014, and this petition to set aside judgment was filed on March 18, 2015. Therefore, Bridges’s petition is untimely.

{¶6} However, R.C. 2953.23(A)(1) sets forth a two-pronged test for when a court may “entertain a petition filed after the expiration \* \* \* period \* \* \*.” First, the petitioner must show that he or she “was unavoidably prevented from the discovery of” new evidence or “the United States Supreme Court recognized a new \* \* \* right that applies retroactively” to the petitioner. R.C. 2953.23(A)(1)(a). Second, the petitioner must show “by clear and convincing evidence 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 \* \* \*.” R.C. 2953.23(A)(1)(b).

{¶7} Notwithstanding the exception for newly discovered evidence, res judicata may be a proper basis upon which to dismiss a petition for postconviction relief under R.C. 2953.21. *State v. Cole*, 2 Ohio St.3d 112, 113, 443 N.E.2d 169 (1982). The doctrine of res judicata bars a defendant “from raising and litigating in any proceeding except an appeal from [a final] judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial \* \* \* or on an appeal from that judgment.” *State v. Perry*, 10 Ohio St.2d 175, 180, 226 N.E.2d 104 (1967).

#### Standard of Review

{¶8} “[A] trial court’s decision granting or denying a postconviction petition filed pursuant to R.C. 2953.21 should be upheld absent an abuse of discretion; a reviewing court should not overrule the trial court’s finding on a petition for postconviction relief that is supported by competent and credible evidence.” *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 58.

### Analysis

{¶9} Bridges raised four issues in his petition for postconviction relief, and he raises the same four issues in this appeal: first, that he was denied effective assistance of counsel at trial; second, that the trial court lacked subject matter jurisdiction to hear his case because of an alleged improper bindover; third, that his speedy trial rights pursuant to R.C. 2945.71 were violated; and fourth, that there was witness and prosecutorial misconduct during his trial.

### Ineffective Assistance of Counsel

{¶10} “[I]neffective assistance of counsel ordinarily should be raised on direct appeal.” *State v. Jones*, 8th Dist. Cuyahoga No. 83601, 2004-Ohio-3868, ¶ 6. However, “when allegations of ineffective assistance of counsel hinge on facts not appearing in the record, the proper remedy is a petition for postconviction relief rather than direct appeal.” *State v. Curtis*, 8th Dist. Cuyahoga No. 89412, 2008-Ohio-916, ¶ 8.

{¶11} To succeed on a claim of ineffective assistance of counsel in a postconviction relief petition, a defendant must present “evidence outside the record that was not in existence and was not available to the [defendant] in time to support a direct appeal. The evidence submitted outside the record must be competent, relevant, and material to the

issue at hand.” (Citation omitted.) *State v. Krzykowski*, 8th Dist. Cuyahoga Nos. 83599, 83842, 84056, 2004-Ohio-5966, ¶ 11. *See also State v. Lewis*, 8th Dist. Cuyahoga No. 73736, Ohio App. LEXIS 5777, (Dec. 3, 1998) (“submitting evidence dehors the record in support of a petition for postconviction relief does not preclude the application of res judicata if the claim could fairly have been determined on direct appeal based on the information contained in the trial record”).

{¶12} In his appellate brief, Bridges states that he “divides his ineffective-assistance arguments into three categories: those involving the pretrial stage of the proceedings, those involving the trial itself, and those involving the penalty phase.” Specifically, Bridges claims that “his attorneys rendered ineffective assistance in failing to call any witnesses at trial or test any evidence or challenge any statements.” However, Bridges fails to provide any newly discovered evidence that is material to his case in support of his arguments.

{¶13} For example, Bridges argues that his “trial counsel failed to subpoena his son as a material witness.” Additionally, Bridges refers to “other suspects in the murder,” namely two of the witnesses who testified at trial, Jason Quinones and George William King. Bridges also argues that his counsel failed to hire a private investigator, “when trial counsel knew before hand that issues was [sic] needed to be explored.” Furthermore, Bridges argues that his counsel failed to introduce the weather report from the day in question, January 5, 2013.

{¶14} Upon review, we determine that all of these things — the testimony of Bridges’s son, Quinones, and King, the notion of hiring an investigator, and the weather

on January 5, 2013 — were known or available to Bridges during his trial and his direct appeal. None of the issues that Bridges raises amount to competent, relevant, and material newly discovered evidence. Indeed, Bridges’s affidavit states that his “appeal counsel should have raised” the issue of his son as a witness in his “direct appeal.”

{¶15} Therefore, res judicata bars these arguments, and Bridges’s first assigned error is overruled.

### **Subject Matter Jurisdiction and Alleged Improper Bindover**

{¶16} Bridges argues that “he was not properly bound-over by a Berea Municipal Court Judge to the Cuyahoga County Court of Common Pleas” and that this deprived the common pleas court of subject matter jurisdiction. This issue of improper bindover is barred by res judicata, because it is not dependent on evidence outside the record and could have been raised in the trial court or on direct appeal. *See, e.g., State v. Callahan*, 7th Dist. Mahoning No. 12MA173, 2013-Ohio-5864. Bridges’s second assigned error is overruled.

### **Speedy Trial**

{¶17} Bridges argues that the “record clearly demonstrates non-compliance with §2945.71(C),” which governs a person against whom a felony charge is pending’s right to a speedy trial.

{¶18} Bridges failed to raise a speedy trial issue in his direct appeal and presents no evidence or argument as to why he was prevented from doing so. Accordingly, his allegations of speedy trial right violations are barred by res judicata. *See State v. Peterson*, 8th Dist. Cuyahoga No. 97362, 2012-Ohio-2200, ¶ 13 (the defendant’s speedy

trial argument in his appeal concerning a resentencing hearing was prohibited by res judicata, because he failed to raise a speedy trial argument in his direct appeal). Accordingly, Bridges's third assigned error is overruled.

### **Witness and Prosecutorial Misconduct**

{¶19} “The test for prosecutorial misconduct is whether remarks are improper and, if so, whether they prejudicially affected substantial rights of the accused.” *State v. Lott*, 51 Ohio St.3d 160, 165, 555 N.E.2d 293 (1990). Additionally, allegations of misconduct by a witness may be grounds for a new trial if the misconduct materially affected the defendant's substantial rights.

{¶20} Bridges's argument on appeal mostly concerns the weight and credibility of the witnesses' testimony and evidence presented at trial. In Bridges's direct appeal, this court held that Bridges's convictions were not against the manifest weight of the evidence. *See Bridges*, 8th Dist. Cuyahoga No. 100805, 2014-Ohio-4570. Therefore, this argument is barred by the doctrine of res judicata.

{¶21} Bridges further argues that the following remark by the prosecutor during closing arguments deprived him of a fair trial: “that they don't know where the victim was killed or the location or the time of death but know that Andrey did it.” Bridges was aware of this remark during trial and, therefore, should have raised his prosecutorial misconduct argument during his direct appeal. Having failed to do so, his argument is now barred by res judicata. *See State v. Onunwor*, 8th Dist. Cuyahoga No. 97895, 2012-Ohio-4818, ¶ 12. Accordingly, Bridges's fourth assigned error is overruled.

### **Motion for New Trial**



{¶22} Pursuant to Crim.R. 33(B), a motion for a new trial based upon newly discovered evidence shall be filed within 120 days of the verdict, “unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing his motion,” then the motion may be filed with leave of court.

#### Standard of Review

{¶23} “Motions for new trial pursuant to Crim.R. 33(B) are addressed to the sound discretion of the trial court \* \* \* and will not be disturbed on appeal absent an abuse of discretion.” *State v. Schiebel*, 55 Ohio St.3d 71, 76, 564 N.E.2d 54 (1990).

#### Analysis

{¶24} Bridges raised three issues in his motion for a new trial, and he raises the same three issues in this appeal: first, that the trial court abused its discretion when it denied his motion for new trial based on newly discovered evidence; second, that the trial court abused its discretion when it admitted prejudicial photographic evidence; and third, that his \$5 million bond was unconstitutional.

#### Newly Discovered Evidence

{¶25} In the instant case, Bridges was convicted on November 8, 2013, and he filed his motion for new trial on May 11, 2015, without leave of court. Bridges did not show, by clear and convincing evidence, that he was unavoidably delayed in filing the motion. “Unavoidable delay results when the party had no knowledge of the existence of the ground supporting the motion for new trial and could not have learned of the existence of that ground within the time prescribed for filing the motion for new trial in the exercise of

reasonable diligence.” *State v. Green*, 10th Dist. Franklin No. 13AP-260, 2013-Ohio-5327, ¶ 10.

{¶26} The bulk of Bridges’s argument under this assigned error concerns the sufficiency and weight of the evidence presented at his trial. These issues were argued and decided in his direct appeal; therefore, they are improperly raised in his postconviction relief petition.

{¶27} Bridges additionally argues, verbatim, that he should be granted a new trial, because

[t]he state failed to prove that [Acoff] was murdered on January 5th when there is other whereabouts, and posting well after the state claims it happened on, besides the possibility of one amp running on his account there is still another posting one on January 12th the other January 22nd. [Bridges] has an alibi in which he was not awarded to entertain in trial which caused circumstantial evidence to sit as evidence in trial.

{¶28} Although somewhat difficult to ascertain what Bridges’s specific arguments are, we find that Bridges’s motion is untimely, because it is not based on newly discovered evidence. For example, whether Bridges had an alibi is certainly something that he was not unavoidably prevented from knowing within the time frame prescribed by Crim.R. 33. Therefore, the court did not abuse its discretion when it denied Bridges’s motion for a new trial, and his fifth assigned error is overruled.

#### **Admissibility of Photographic Evidence**

{¶29} Bridges argues that the court erred “in admitting a highly inflammatory and gruesome photo” at this trial. Although Bridges does not identify a specific photograph or photographs under this assigned error, he refers to “autopsy photographs” in general.

{¶30} The admissibility of photographic evidence is governed by Evid.R. 403 and subject to an abuse of discretion standard upon review. *State v. Primeau*, 8th Dist. Cuyahoga No. 97901, 2012-Ohio-5172, ¶ 88. However, Bridges’s failure to raise this issue in his direct appeal operates to bar the issue in his petition for postconviction relief under the doctrine of res judicata. *See State v. Glenn*, 8th Dist. Cuyahoga No. 94425, 2012-Ohio-1530, ¶ 7-8 (photographic evidence was in existence at the time of trial and, thus, could have been raised on direct appeal). Bridges’s sixth assigned error is without merit.

### **Excessive Bond**

{¶31} Bridges argues that his \$5 million bond was in violation of the Eighth Amendment to the United States Constitution’s prohibition against “excessive bail.” The amount of bail set in a criminal proceeding is within the sound discretion of the trial court. *State v. Cogar*, 5th Dist. Holmes No. 05CA009, 2006-Ohio-5218. “However, after conviction, any error concerning the issue of pretrial bail is moot. \* \* \* The proper procedure for seeking relief for excessive pretrial bail is through habeas corpus proceedings.” *State v. Towns*, 8th Dist. Cuyahoga No. 88059, 2007-Ohio-529, ¶ 20. Accordingly, Bridges’s seventh and final assigned error is overruled.

{¶32} Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

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

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PATRICIA ANN BLACKMON, JUDGE

MARY EILEEN KILBANE, P.J., and  
ANITA LASTER MAYS, J., CONCUR

## **APPENDIX**

### **Assignments of Error**

- I. The Appellant was denied the effective assistance [of] counsel guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution.
- II. The Appellant was deprived his Fourteenth Amendment right to due process under the United States Constitution and Article I, Section 16 of the Ohio Constitution when the trial court lack [sic] subject matter jurisdiction of his case.
- III. The Appellant asserts that he was denied a speedy trial pursuant to R.C. 2945.71 in violation [of] the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution.
- IV. The Appellant was denied a fair trial, due to both witness misconduct and prosecution misconduct during closing arguments in violation of

his Sixth and Fourteenth Amendment under the United States Constitution (right to a fair trial and due process) and Article I, Section 16 of the Ohio Constitution.

- V. The Trial Court abused its discretion when it denied the motion for new trial based on newly discovered evidence.
- VI. The [T]rial Court abused its discretion when it denied the appellant [sic] when admitting a highly inflammatory and gruesome photo.
- VII. [T]he Trial Court abused its discretion when it denied the motion for a new trial where the new trial was based on a violation to the appellant Eighth amendment [sic].