

[Cite as *State v. Williams*, 2015-Ohio-881.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101806

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ALVIN WILLIAMS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-11-546715-A

BEFORE: Boyle, J., Kilbane, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: March 12, 2015

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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MARY J. BOYLE, J.:

{¶1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶2} Defendant-appellant, Alvin Williams, appeals from a judgment denying his motion to correct judgment. He raises one assignment of error for our review, namely, that he was prejudiced “when the trial court failed to merge counts (2) and (9) of the aggravated robbery and kidnapping.” Finding no merit to his appeal, we affirm.

Procedural History

{¶3} In February 2011, Williams was indicted on three counts of kidnapping, four counts of aggravated robbery, two counts of felonious assault, and one count of having a weapon while under a disability. All of the counts except the weapons disability carried one- and three-year firearm specifications, as well as notice of prior conviction and repeat violent offender specifications.

{¶4} In August 2011, Williams pleaded guilty to an amended indictment of one count of kidnapping with a one-year firearm specification, one count of aggravated robbery with a one-year firearm specification, one count of felonious assault with a three-year firearm specification, and having a weapon while under a disability. All other specifications were deleted and all other counts were nolle.

{¶5} On September 7, 2011, the trial court sentenced Williams to a total of 16 years in prison. The court merged the firearm specifications and sentenced Williams to three years for the firearm specification, and ordered that it be served prior to and consecutive to seven years for felonious assault, three years for kidnapping, six years for aggravated robbery, and one year for having a weapon while under a disability. The court ordered that the kidnapping count and the

weapons disability count be served concurrent to each other and to the aggravated robbery and felonious assault. The court then ordered the aggravated robbery count and the felonious assault count be served consecutive to one another, but concurrent to all other counts.

{¶6} Williams did not directly appeal his convictions or sentence, but on September 8, 2011, Williams filed a motion with the trial court asking it to reconsider or modify his sentence, arguing that his sentence was excessive. The trial court denied Williams's motion. Williams did not appeal this judgment.

{¶7} On February 24, 2012, Williams filed a motion titled "Motion for Merger of Offenses Pursuant to R.C. 2941.25(A)." In his motion, he argued that his kidnapping, aggravated robbery, and felonious assault convictions should have merged. The trial court denied his motion. Williams did not appeal this judgment.

{¶8} On April 24, 2013, Williams moved to withdraw his plea, arguing that his plea was not knowingly, voluntarily, and intelligently entered into because his trial counsel was ineffective. Williams also argued that his aggravated robbery conviction and kidnapping conviction should have merged. The trial court denied Williams's motion. Williams did not appeal this judgment.

{¶9} On August 20, 2013, Williams moved for leave for delayed appeal, attempting to appeal his September 2011 conviction. This court denied his motion for leave for delayed appeal in September 2013.

{¶10} On July 16, 2014, Williams filed a "motion to correct judgment," arguing that the trial court should have merged his aggravated robbery and kidnapping convictions. The trial court denied his motion on July 24, 2014. It is from this judgment that Williams appeals.

Analysis

{¶11} A vaguely titled motion, including a motion to correct or vacate a 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). After review, we find that Williams’s motion meets these four requirements. Accordingly, we shall construe Williams’s motion to correct judgment as a petition for postconviction relief. *See also State v. Meincke*, 8th Dist. Cuyahoga No. 96407, 2011-Ohio-6473.

{¶12} R.C. 2953.21(A)(2) provides that a petition for postconviction relief 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 after the expiration of the time in which a direct appeal could have been filed. Williams filed his postconviction motion well after the expiration of the time prescribed by R.C. 2953.21(A)(2) (it was also his third petition as he filed one in September 2011 and February 2012). R.C. 2953.23 closely circumscribes the jurisdiction of a common pleas court to entertain a late postconviction claim or a successive petition: the petitioner must show either that he was unavoidably prevented from discovering the facts upon which his claim depends, or that his claim is predicated upon a new or retrospectively applicable right recognized by the United States Supreme Court; and he must show “by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found [him] guilty of the offense of which [he] was convicted.” Williams did not satisfy these requirements, and, therefore, the common pleas court was without jurisdiction to entertain his postconviction motion. *See R.C. 2953.23(A).*

{¶13} Even if we were able to address his petition for postconviction relief, Williams does not provide this court with a transcript of the proceedings. Without a transcript, we are not able to review the merits of his claim. It is well settled that without a transcript, we must presume regularity in the proceedings. *State v. Brown*, 8th Dist. Cuyahoga No. 95086, 2011-Ohio-345, ¶ 9, citing *State v. Estrada*, 126 Ohio App.3d 553, 556, 710 N.E.2d 1168 (7th Dist.1998).

{¶14} Accordingly, Williams's sole assignment of error is overruled.

{¶15} 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. The defendant's conviction having been affirmed, any bail pending appeal is terminated. 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.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
EILEEN T. GALLAGHER, J., CONCUR