

[Cite as *State v. Russell*, 2016-Ohio-1230.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 103604**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**ROBERT W. RUSSELL**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-03-432508-ZA

**BEFORE:** Keough, P.J., Kilbane, J., and S. Gallagher, J.

**RELEASED AND JOURNALIZED:** March 24, 2016

**APPELLANT**

Robert W. Russell  
Southeastern Correctional Institution  
No. 453744  
16759 Snake Hollow Road  
P.O. Box 59  
Nelsonville, Ohio 45764

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
By: Diane Smilanick  
Assistant Prosecuting Attorney  
The Justice Center, 9th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

KATHLEEN ANN KEOUGH, P.J.:

{¶1} Defendant-appellant, Robert Russell, appeals from the trial court's decision denying his petition for postconviction relief. For the reasons that follow, we affirm.

{¶2} In 2003, Russell was named in a sixteen-count indictment charging him with two counts of rape, one count of attempted rape, five counts of felonious sexual penetration, five counts of gross sexual imposition, and three counts of kidnapping. The victim was a child under the age of thirteen. Following a jury trial, Russell was found guilty of all charges and was sentenced to spend his life in prison. This court affirmed his convictions and sentence in *State v. Russell*, 8th Dist. Cuyahoga No. 83699, 2004-Ohio-5031.<sup>1</sup>

{¶3} In July 2004 and while his direct appeal was pending, Russell filed a timely petition for postconviction relief. After eleven years of cross-filings between Russell and the state, the trial court issued written findings of fact and conclusions of law denying the petition.

{¶4} Russell now appeals from this decision, raising the following eight assignments of error, which will be addressed together and out of order where appropriate:

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<sup>1</sup>The Ohio Supreme Court declined to accept Russell's appeal. *State v. Russell*, 105 Ohio St.3d 1452, 2005-Ohio-763, 823 N.E.2d 457. Russell's application for reopening his appeal was also denied. *State v. Russell*, 8th Dist. Cuyahoga No. 83699, 2005-Ohio-2998.

I. Ineffective assistance of trial counsel for ignoring defendants consistent demand to secure offense and incident reports from North Royalton and Wooster, Ohio which would have confirmed critical dates leading to the indictment dismissal.

II. Ineffective assistance of appellate counsel for not raising the statute [sic] limitations R.C. 2901.13 (six years) pursuant to defendants multiple requests.

III. Ineffective assistance of trial counsel for failure to subpoena Mary A. “Penny” Russell (Granowicz) the principal architect (psychopath) who effectively murdered her own mother Olga C. Russell (D.O.B. 10-06-17) precipitating the suicide of William E. Russell Jr. and fabricated the case against this defendant.

IV. Prosecutorial misconduct when William D. Mason, Marilyn Barkley Cassidy, and Paul Soucie attacked (2001/2002) a defenseless citizen Olga C. (Demarco) Russell (D.O.B. 10-06-17) the Russell family 86 year-old matriarch. Murder took a legal form, in aid of patronage, cronyism, and bribery.

V. Abuse of discretion and vindictive series of Rico-level predicate acts by Judge Villanueva by withholding the required judgment for over 10.5 years in violation of Criminal Rule 35.

VI. Judicial misconduct by the Ninth District Court of Appeals acting in consortium with certain jurist of the Supreme Court of Ohio. Their joint misconduct denied the writer access to critical offense incident reports.

VII. Judge Jose A. Villanueva incorrectly cites the sentence which was 10 to life, another flaw precipitated by the egregious multiyear delay in ruling. The long delayed “findings” should be stricken and found to be a nullity.

VIII. Ineffective assistance of counsel for failure to subpoena critical witnesses who would have testified in refutation of accusers claims and the criminal and subversive role of Mary A. “Penny” Russell (Granowicz).

{¶5} “[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 \* \* \*.” *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 58. The term “abuse of discretion” means “an unreasonable, arbitrary, or unconscionable action.” *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, 914 N.E.2d 159, ¶ 15. “[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.” *Gondor* at 390.

{¶6} In his fifth assignment of error, Russell contends that the trial court abused its discretion by withholding judgment on his petition for postconviction relief for over ten and one-half years in violation of Crim.R. 35. He argues that this breach of Crim.R. 35 and the legislative intent of R.C. 2953.21(A) supports his theory that the trial court engaged in a pattern of corrupt activity with the prosecution, constituting an abuse of process. Russell requests that this court declare the trial court’s findings of fact and conclusions of law untimely and invalid.

{¶7} Crim.R. 35(C) specifically requires a trial court to “file its ruling upon a petition for post-conviction relief, including findings of fact and conclusions of law if required by law, not later than one hundred eighty days after the petition is filed.” A review of the record shows that Russell filed his petition for postconviction relief on July 14, 2004. Russell subsequently filed multiple petitions and requests to supplement his arguments up and until June 2011. Despite these additional filings, the trial court did not

rule on Russell’s petition until September 15, 2015 — four years after Russell’s last filing in support of his petition. This four-year delay is in violation of Crim.R. 35(C) and is excessive. *See State ex rel. Turpin v. Stark Cty. Court of Common Pleas*, 8 Ohio St.2d 1, 2, 220 N.E.2d 670 (1966) (12-month delay in ruling on postconviction petition without justification is excessive); *State ex rel. Bunting v. Haas*, 102 Ohio St.3d 161, 2004-Ohio-2055, 807 N.E.2d 359 (11-month delay appears excessive).

{¶8} When the trial court is in violation of Crim.R. 35(C) and no justification appears in the record, the Ohio Supreme Court has made it clear that “[a] writ of procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.” *State ex rel. R.W. Sidley, Inc. v. Crawford*, 100 Ohio St.3d 113, 2003-Ohio-5101, 796 N.E.2d 929, ¶ 16, quoting *State ex rel. Weiss v. Hoover*, 84 Ohio St.3d 530, 532, 705 N.E.2d 1227 (1999); *Hass* at ¶ 8.

{¶9} In this case, Russell did not file a writ of procedendo to compel the trial court to rule on his petition for postconviction relief. Therefore, Russell must demonstrate that he was prejudiced by the trial court’s unjustified delay.

{¶10} Under R.C. 2953.21(A), a person 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” may file a petition in the court that imposed the sentence for the offense, “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.”

{¶11} Russell has failed to demonstrate prejudice and we find none in the record. After independently reviewing Russell's petition and supplemental filings, we find that the grounds raised therein are insufficient to justify relief from his convictions. As the trial court correctly pointed out in its decision denying Russell's petition, the arguments Russell raises could have been raised in his direct appeal. In fact, a majority of the arguments he asserts were raised in his direct appeal, including challenging his trial counsel's effectiveness and whether his case should have been dismissed as untimely. A petition for postconviction relief is not a substitute for a direct appeal nor a means of an additional or supplementary direct appeal of a conviction and sentence. *State v. Williams*, 8th Dist. Cuyahoga No. 85893, 2005-Ohio-6020, ¶ 8.

{¶12} Insofar as Russell contends that postconviction relief should be granted because his conviction was based on a conspiracy orchestrated by his sister, and perpetuated by the state of Ohio, Russell only provides self-serving affidavits, excerpts from police reports and court filings, and newspaper articles that do not support his argument. Moreover, the documents do not support his claim for postconviction relief; they only reveal a tumultuous relationship between family members. Russell fails to argue any constitutional infirmity justifying postconviction relief. Accordingly, Russell's fifth assignment of error is overruled.

{¶13} Russell's remaining assignments of error and supporting arguments are generalized statements that contain no supporting case law or statutory authority, and offer no explanation how the trial court abused its discretion in denying his petition for

postconviction relief. Accordingly, we can decline to address of these assignments of error because Russell fails to comply with App.R. 12 and 16(A)(7).

{¶14} Moreover, after reviewing the record and relevant case law, we find that Russell's remaining assignments of error are barred by the doctrine of res judicata.

Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment or conviction, or an appeal from that judgment.

*State v. Cole*, 2 Ohio St.3d 112, 113, 443 N.E.2d 169 (1982), citing *State v. Perry*, 10 Ohio St.2d 175, 226 NE.2d 104 (1967).

{¶15} It is well settled that the doctrine of res judicata applies in postconviction relief proceedings. *State v. Blalock*, 8th Dist. Cuyahoga No. 94198, 2010-Ohio-4494, ¶ 19. Thus, a defendant may not raise any issue in a motion for postconviction relief if he could have raised the issue on direct appeal. *State v. Reynolds*, 79 Ohio St.3d 158, 679 N.E.2d 1131 (1997).

{¶16} In this case, Russell assigns as error issues pertaining to the effectiveness of his trial counsel, prosecutorial misconduct, and judicial misconduct. All of the events giving rise to these issues were either raised by Russell on direct appeal or could have been raised on direct appeal. Therefore, res judicata bars the arguments raised in his

remaining assignments of error. Accordingly, assignments of error one, two, three, four, six, seven, eight and nine are overruled

{¶17} Judgment affirmed.

It is ordered that appellee recover from appellant 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.

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KATHLEEN ANN KEOUGH, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and  
SEAN C. GALLAGHER, J., CONCUR