

[Cite as *State v. Crockett*, 2016-Ohio-220.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103199

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TAI-RON R. CROCKETT

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-574520-A

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

RELEASED AND JOURNALIZED: January 21, 2016

APPELLANT

Tai-Ron R. Crockett, pro se
Inmate No. 644-703
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, Ohio 44030

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
Frank Romeo Zeleznikar
Assistant County Prosecutor
The Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY EILEEN KILBANE, P.J.:

{¶1} Defendant-appellant, Tai-Ron Crockett (“Crockett”), appeals from the denial of his petition for postconviction relief. For the reasons set forth below, we affirm.

{¶2} On May 29, 2013, Crockett was charged in a six-count indictment, in connection with a fatal shooting that occurred on May 11, 2013. Count 1 of the indictment charged Crockett with aggravated murder, in violation of R.C. 2903.01(A), with one- and three-year firearm specifications. Count 2 charged him with murder, in violation of R.C. 2903.02(B), with one- and three-year firearm specifications. Counts 3 and 4 charged him with felonious assault, in violation of R.C. 2903.11(A)(1), with one- and three-year firearm specifications. Count 5 charged appellant with kidnapping, in violation of R.C. 2905.01(A)(3), with one- and three-year firearm specifications. Count 6 charged him with having weapons while under disability, in violation of R.C. 2923.13(A)(2). Thereafter, on June 19, 2013, Crockett’s trial counsel filed a motion to refer Crockett to the psychiatric clinic for an evaluation of his sanity and an evaluation of his competency to stand trial. The trial court granted the motion on June 24, 2013.

{¶3} Crockett was evaluated on July 20, 2013. The examiner subsequently determined, with reasonable medical certainty, that Crockett did not have a severe mental disease or defect at the time of the shooting. The examiner also determined that Crockett is able to understand the nature and objectives of the court proceedings and is able to assist in his defense. On September 25, 2013, Crockett withdrew his previously entered pleas of not guilty and entered pleas of guilty to two of the following amended counts: murder, in violation of R.C. 2903.02(A), with a three-year firearm specification; and felonious assault, in violation of R.C. 2903.11(A)(1).

The state nolleed the remaining charges. The record reveals that the plea to the two counts carried with it an agreed sentence of 23 years to life.

{¶4} Crockett, with new counsel, appealed his conviction for murder and felonious assault to this court in *State v. Crockett*, 8th Dist. Cuyahoga No. 100923, 2014-Ohio-4576, ¶ 3-4 (“*Crockett I*”).

{¶5} In *Crockett I*, the transcript was filed with this court on March 10, 2014. On appeal, Crockett asserted that the offenses should have merged and that his sentence was erroneous. This court affirmed the conviction. *Id.*

{¶6} On December 10, 2014, Crockett filed an application to reopen his appeal, in which he argued that his appellate counsel was ineffective for not assigning as error claimed deficiencies in the trial court’s Crim.R. 11 colloquy. On January 28, 2015, this court denied the application to reopen. *State v. Crockett*, 8th Dist. Cuyahoga No. 100923, 2015-Ohio-300 (“*Crockett II*”).

{¶7} Approximately three months later, Crockett filed a pro se delayed application for postconviction relief. He argued that his trial counsel was ineffective for failing to obtain his 2013 mental health records to determine whether his mental health providers would have opined that he was not competent to stand trial or was not legally sane. The state filed its brief in opposition on June 8, 2015. The state asserted that Crockett was not unavoidably prevented from discovering the facts offered in support of his claim for relief. The state also argued that Crockett could not demonstrate that a constitutional error occurred. The trial court denied the motion on June 10, 2015.

{¶8} Crockett now appeals, assigning three errors for our review. We shall address the assignments of error out of order for the sake of convenience:

Assignment of Error One

The trial court erred to Appellant Tai-Ron Crockett's prejudice and abused its discretion when it granted the State of Ohio an extension of time to file a response in opposition to his delayed postconviction petition, that was well outside the 28 day rule of Ohio Civil Rule 12, being in default, and denying Appellant's right to procedural due process of law; Article I § 10 of the Ohio Constitution; and a violation of the Fourteenth Amendment of the United States Constitution.

Assignment of Error Two

The trial court erred to Appellant's prejudice and abused its discretion when it failed to allow him a chance to respond to the state's motion in opposition within the 14 day time limit as proscribed by Ohio Civil Rule 56(C) before dismissing his postconviction petition, a violation of his right to procedural due process of law; Article I § 10 of the Ohio Constitution; and a violation of the Fourteenth Amendment of the United States Constitution.

Assignment of Error Three

The trial court erred to Appellant's prejudice and abused its discretion when it failed to grant Appellant Tai-Ron Crockett's delayed postconviction petition upon an evidentiary hearing to develop the record after he demonstrated and satisfied R.C. §2953.23(1)(A) as being unavoidably prevented from discovering mental health reports de hors the record due to ineffective assistance of trial counsel for failure to subpoena and investigate whether those psychologists or psychiatrist reports would have offered a different opinion as to his legal sanity to plead guilty which served to deny him effective assistance of counsel. A violation of Article I, Section 10 of the Ohio Constitution and a violation of the VI and XIV Amendments to the U.S. Constitution.

Postconviction Relief

{¶9} In his third assignment of error, Crockett argues that his trial counsel was ineffective by failing to conduct an investigation into whether he was actually sane and competent to stand trial. He additionally argues that the trial court erred in denying his petition without holding an evidentiary hearing. In opposition, the state argues that the petition was properly denied as untimely.

{¶10} R.C. Chapter 2953 governs petitions for postconviction relief. 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} The right to postconviction relief is not a constitutional right but is a right created by statute and, as such, a petitioner receives no more rights than those granted by the statute. *State v. Calhoun*, 86 Ohio St.3d 279, 281, 1999-Ohio-102, 714 N.E.2d 905, ¶ 17. Furthermore, there are strict statutory time limits for seeking postconviction relief. R.C. 2953.21; *State v. Moon*, 8th Dist. Cuyahoga No. 101972, 2015-Ohio-1550, ¶ 19. Pursuant to former R.C. 2953.21(A)(2), a petition for postconviction relief must be filed no later than 180 days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the conviction or, if no appeal is taken, no later than 180 days after the expiration of time for filing the appeal.

{¶12} Pursuant to R.C. 2953.23(A), a trial court may not entertain an untimely filed petition for postconviction relief unless two requirements are met. First, the petitioner must demonstrate either that (1) he was unavoidably prevented from discovering the facts upon which he relies in the petition or (2) the United States Supreme Court has recognized a new federal or state right that applies retroactively to the petitioner. R.C. 2953.23(A)(1)(a). Second, the petitioner must establish by clear and convincing evidence that no reasonable factfinder would have found him guilty but for constitutional error at trial. R.C. 2953.23(A)(1)(b); *State v. Thomas*, 8th Dist. Cuyahoga No. 99972, 2014-Ohio-1512, ¶ 6-7. Unless the above exceptions apply, the trial court has no jurisdiction to consider an untimely filed petition for postconviction relief. *Moon* at ¶ 21. In *Moon*, the court explained:

The time limit for filing a motion 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. *Thomas*, at ¶ 8, citing *State v. Carter*, 2d Dist. Clark No. 03CA-11, 2003-Ohio-4838, ¶ 13, citing *State v. Beuke*, 130 Ohio App.3d 633, 720 N.E.2d 962 (1st Dist.1998).

Id. at ¶ 21.

{¶13} Finally, a petitioner is not automatically entitled to a hearing on a petition for postconviction relief. *State v. Cole*, 2 Ohio St.3d 112, 113, 443 N.E.2d 169 (1982). A trial court may dismiss a petition for postconviction relief without a hearing where the petition, the supporting affidavits, the documentary evidence, the files, and the records do not demonstrate that petitioner set forth sufficient operative facts to establish substantive grounds for relief. *Calhoun* at paragraph two of the syllabus. A trial court's decision to deny a postconviction petition without a hearing is reviewed for abuse of discretion. *State v. Broom*, 8th Dist. Cuyahoga No. 96747, 2012-Ohio-587, ¶ 13; *State v. Abdussatar*, 8th Dist. Cuyahoga No. 92439, 2009-Ohio-5232, ¶ 15.

{¶14} In this matter, the transcript in Crockett's direct appeal was filed on March 10, 2014. Therefore, the latest date on which he could have filed a timely petition for postconviction relief was September 10, 2014, or 180 days after his trial transcript was filed. Crockett did not file his petition for postconviction relief until April 29, 2015, which was more than eight months past the September 10, 2014 deadline.

{¶15} In determining whether this jurisdictional deadline may be overcome pursuant to R.C. 2953.23(A), we begin by noting the nature of Crockett's claim for relief. Crockett claims that his trial counsel was ineffective for failing to investigate his competence and sanity. In support of this claim, Crockett offers his January-March 2013 mental health records. The

record does not support the conclusion that Crockett was unavoidably prevented from discovering these facts prior to trial, however.

{¶16} In addition, the record demonstrates that trial counsel, less than one month after Crockett was indicted, filed a motion for sanity and competency referrals, which was addressed at various pretrials. The trial court was clearly made aware of the salient competency and sanity issues in this matter, and the court then referred Crockett to the court psychiatric clinic for competency and sanity evaluations. Based upon those evaluations, the parties stipulated to the court in Crockett's presence that the reports prepared by the court psychiatrist had determined that Crockett was both legally sane at the time of the shooting and competent to stand trial. Accordingly, R.C. 2953.23(A)(1)(a) does not afford Crockett a basis for relief, despite his untimely petition.

{¶17} We additionally conclude that since the petition was outside of the jurisdictional time limits, the trial court did not abuse its discretion in denying the petition without holding a hearing.

No Default Judgment

{¶18} In his first assignment of error, Crockett maintains that since the state did not submit its answer to his petition within 28 days, he was entitled to a default judgment. In his second assignment of error, he argues that the trial court erred in denying his petition prior to his filing of a reply to the state's brief.

{¶19} With regard to the issue of the timeliness of the state's responsive pleading, this court, in *State v. Halliwell*, 134 Ohio App.3d 730, 735, 732 N.E.2d 405 (8th Dist.1999), held that a petitioner may not obtain a "default judgment" based on his petition for postconviction proceeding. The *Halliwell* court stated:

In *State v. Sklenar* (1991), 71 Ohio App.3d 444, 594 N.E.2d 88, the court held that the time period to respond to a petition for post-conviction relief set forth in R.C. 2953.21(D), is not mandatory, but, in fact, directory, meaning that the time period in 2953.21(D) is not rigid. *See, also, State v. Bonnell*, 1998 Ohio App. LEXIS 3943 (Aug. 27, 1998), Cuyahoga App. Nos. 69835/73177, unreported. Furthermore, the defendant may not obtain a “default judgment” based on his petition for postconviction proceeding. *State v. Roberts* (1991), 66 Ohio App.3d 654, 656, 585 N.E.2d 934; *State v. Williams*, [8th Dist.] Cuyahoga No. 64151, 1993 Ohio App. LEXIS 5647, *6-7 (Nov. 24, 1993).

Id.; *see also State v. Jester*, 8th Dist. Cuyahoga No. 83520, 2004-Ohio-3611; *State v. Darden*, 64 Ohio App.3d 691, 693-694, 582 N.E.2d 1065 (6th Dist.1989).

{¶20} In this matter, since the time specified for the state’s response to a petition to vacate or set aside sentence is directory rather than mandatory, and the record demonstrates that Crockett was not entitled to judgment as a matter of law, the trial court did not abuse its discretion insofar as it considered the state’s motion then denied the petition. Similarly, since Crockett’s petition and supporting materials failed to demonstrate that he is entitled to postconviction relief, the trial court did not err in rendering its ruling prior to the filing of a reply brief from Crockett.

{¶21} The first and second assignments of error are without merit.

{¶22} Judgment is 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 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 EILEEN KILBANE, PRESIDING JUDGE

TIM McCORMACK, J., and
EILEEN T. GALLAGHER, J., CONCUR