

[Cite as *State v. McLin*, 2016-Ohio-302.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103172

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ISAIAH MCLIN

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-12-559636-A

BEFORE: E.A. Gallagher, P.J., Boyle, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: January 28, 2016

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EILEEN A. GALLAGHER, P.J.:

{¶1} Defendant-appellant Isaiah McLin appeals the denial of his petition for postconviction relief in the Cuyahoga County Court of Common Pleas. For the following reasons, we dismiss this appeal.

Facts and Procedural Background

{¶2} On October 11, 2012, McLin plead guilty to gross sexual imposition, kidnapping and aggravated robbery in CR-12-559166; robbery and grand theft in CR-12-559494; and receiving stolen property in CR-12-559636.

{¶3} Prior to sentencing, McLin filed a motion to withdraw his guilty pleas on the basis that his father, who had hired an attorney to represent him, had not approved of the plea deal. The trial court denied McLin's motion and sentenced him as follows:

- (1) 12 months on receiving stolen property in CR-12-559636;
- (2) 4 years on the robbery and 12 months on the grand theft in CR-12-559494; and
- (3) 18 months on the gross sexual imposition, 8 years on the kidnapping, and 8 years on the aggravated robbery in CR-12-559166. The court ordered the sentence in CR-12-559636-A to be served concurrently with CR-12-559494 and CR-12-559166; the sentence in Counts 3 and 5 in CR-12-559166 is to serve consecutively to each other; and the sentence in CR-12-559494 to run consecutively to the sentence in CR-12-559166. The

total sentence is 20 years with postrelease control. The court also ordered restitution for the victims.

State v. McLin, 8th Dist. Cuyahoga No. 99249, 2013-Ohio-3360, ¶ 6 (“*McLin I*”).

{¶4} McLin appealed the denial of his motion to withdraw his guilty pleas in *McLin I* and this court affirmed. *Id.* at ¶ 21.

{¶5} On December 18, 2014, McLin filed a petition for postconviction relief in all three of his cases asserting he recently obtained an exculpatory affidavit from Ronald Knighter that he attached to his motion. Knighter’s affidavit avers that from January 2014 to February of 2014 he shared a prison cell with a man named Desean Spraggins who confided in him that McLin was wrongfully serving prison time for kidnapping and rape. According to Knighter, Spraggins confessed that he was involved in the underlying incident with McLin and McLin’s role was limited to stealing a vehicle from the alleged victim.

{¶6} Knighter’s affidavit was signed on August 4, 2014. There is no indication in the record as to when McLin learned of or obtained Knighter’s affidavit. The state opposed McLin’s petition for postconviction relief arguing that it was untimely pursuant to R.C. 2953.21 and 2953.23. The state pointed out that McLin’s motion contains no averments from him regarding what he knew of Spraggins’ alleged role at the time of his plea or how and when he discovered the information from Knighter. Furthermore, the state noted that the averments in the affidavit only pertained to the charges of gross sexual

imposition and kidnapping in CR-12-559166 and did not affect McLin's convictions in CR-12-559636 and CR-12-559494.

{¶7} The trial court denied McLin's petition as untimely on April 3, 2015. McLin appeals arguing that the trial court erred in denying his petition as untimely and in failing to hold a hearing on the matter.

Law and Analysis

{¶8} We are unable to address McLin's assignment of error because he has not appealed the correct case and judgment entry to this court. On its face, Spraggins' affidavit pertains only to McLin's convictions for gross sexual imposition and kidnapping in CR-12-559166. McLin instead appealed the trial court's denial of his petition for postconviction relief in CR-12-559636. Because McLin has not presented this court with an appeal of the trial court's denial of his petition in CR-12-559166 and the corresponding record of that case, we find that his failure to appeal the correct case precludes our review.

{¶9} Accordingly, without the appropriate journal entry and record to review, we must presume regularity in the proceedings of the trial court and summarily reject appellant's assignments of error. *State v. Cartellone*, 8th Dist. Cuyahoga No. 99203, 2013-Ohio-3429; *State v. Bruce*, 8th Dist. Cuyahoga No. 96365, 2011-Ohio-2937; *State v. Bleehash*, 5th Dist. Licking No. 05CA123, 2006- Ohio-4580 (dismissing appeal where appellant had appealed the wrong case).

{¶10} We note that even if McLin had appealed the correct case, he would have to hurdle the plethora of case law establishing that a claim of actual innocence based on newly discovered evidence is not itself a constitutional claim nor does it constitute a substantive ground for postconviction relief. *See State v. Byrd*, 145 Ohio App.3d 318, 330-331, 762 N.E.2d 1043 (1st Dist.2001); *State v. Hines*, 8th Dist. Cuyahoga No. 89848, 2008-Ohio-1927, ¶ 24; *State v. Nash*, 8th Dist. Cuyahoga No. 87635, 2006-Ohio-5925, ¶ 14-16.

{¶11} Furthermore, McLin's guilty pleas to the relevant charges would likely bar him from satisfying the conditions under R.C. 2953.23(A)(1) for the trial court to consider an untimely petition for postconviction relief. *State v. Rackley*, 8th Dist. Cuyahoga No. 102962, 2015-Ohio-4504, ¶ 17. Although this court recognized a narrow exception to the general rule that a guilty plea precludes the application of R.C. 2953.23(A)(1), in *State v. Moon*, 8th Dist. Cuyahoga No. 101972, 2015-Ohio-1550, there is nothing in the limited record before us to indicate the unique circumstances present in *Moon* exist in McLin's case.

{¶12} Accordingly, this appeal is dismissed.

It is ordered that appellee recover from appellant the costs herein taxed.

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

EILEEN A. GALLAGHER, PRESIDING JUDGE

MARY J. BOYLE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR