

[Cite as *State v. Jones*, 2017-Ohio-1052.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104667

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**LISA JONES**

DEFENDANT-APPELLANT

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**JUDGMENT:  
DISMISSED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-12-568908-A

**BEFORE:** E.A. Gallagher, P.J., Kilbane, J., and S. Gallagher, J.

**RELEASED AND JOURNALIZED:** March 23, 2017

**FOR APPELLANT**

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**ATTORNEYS FOR APPELLEE**

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EILEEN A. GALLAGHER, P.J.:

{¶1} Defendant-appellant Lisa Jones appeals the denial of her petition for postconviction relief filed in the Cuyahoga County Court of Common Pleas. For the following reasons, we dismiss for lack of a final, appealable order.

### **Facts and Procedural Background**

{¶2} Jones plead guilty to one count of aggravated arson and four counts of arson in CR-12-568908 stemming from a fire she started on November 12, 2012, at her ex-boyfriend's home that spread to four surrounding houses. Jones also plead guilty to one count of menacing by stalking in CR-568910. The trial court imposed an eight year prison term on the aggravated arson count, 18-month prison terms on each count of arson and an 18-month prison term on the menacing by stalking count. The trial court ordered Jones to serve all of the counts consecutively for a cumulative prison sentence of 15 years and six months.

{¶3} Jones brought a direct appeal in *State v. Jones*, 8th Dist. Cuyahoga No. 99703, 2014-Ohio-1634, arguing that her case should have been transferred to the mental health docket, that her guilty pleas were involuntary, that the trial court should have merged her arson counts as allied offenses and that the trial court abused its discretion by prohibiting her from participating in early release prison programs. This court affirmed Jones' plea and conviction but reversed for the trial court to make the required findings under R.C. 2929.14(C)(4) for the imposition of consecutive sentences and for the court to clarify its holding regarding Jones' participation in early release programs.

{¶4} The trial court conducted a resentencing hearing on October 28, 2014. The

trial court altered the original sentence by reducing Jones' prison term for menacing by stalking to a 15-month term and ordering only that offense to be served consecutive to Jones' remaining offenses that were to be served concurrently. Jones' cumulative prison sentence was thereby reduced to nine years and three months.

{¶5} Jones appealed to this court from the resentencing hearing in *State v. Jones*, 8th Dist. Cuyahoga No. 102260, 2016-Ohio-688, arguing that she was denied effective assistance of counsel at her resentencing hearing. Specifically, she argued that her counsel failed to investigate and rebut the victim's testimony from her original sentencing hearing that the trial court incorporated into the resentencing hearing, that her counsel failed to file a motion to transfer her case to the mental health court and that her counsel failed to seek a mitigation of her sentence based on a change in her mental health status. This court affirmed the judgment of the trial court.

{¶6} On May 24, 2016, Jones filed a petition for postconviction relief arguing that false victim testimony was introduced by her ex-boyfriend's daughter, April Milner, at her original sentencing hearing that led to her receiving a harsher sentence than she deserved.<sup>1</sup> At Jones' original sentencing hearing in 2013, Milner told the trial court that Jones and her father had been in a relationship that ended badly. Milner stated that Jones began to harass her father and his family and the harassment culminated in Milner committing the subject arson offenses. Referring to her family, Milner stated that "we have six houses on this one street." Milner told the court that the three of the houses

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<sup>1</sup>Jones supplemented her motion on May 31, 2016, with documentary evidence.

involved in the fire were owned by her family. Milner said that her childhood home was burned to the ground and asked the court to impose the maximum sentence. Milner did not speak at Jones' resentencing.

{¶7} In her petition for postconviction relief Jones alleged that Milner lied about her ownership of the subject properties during the 2013 sentencing hearing and that it was inappropriate for Milner to be heard at sentencing because she was not a victim. Milner attached printouts from the Cuyahoga County website reflecting the transfer history of various properties involved in her arson offenses. Contrary to Jones' claim, records reflect that, at the time of the offense, Milner owned one of the properties listed in Jones' indictment to wit: 555 East 128th Street in Cleveland, Ohio. The trial court summarily denied Jones' motion on June 3, 2016, without issuing findings of fact. The trial court further denied a subsequent motion filed by Jones seeking an explanation of same.

## **Law and Analysis**

### **I. Timeliness and Jurisdiction**

{¶8} Before we can address the merits of Jones' assignments of error we must examine the timeliness of her petition for postconviction relief and our own jurisdiction over the order from which she has appealed.

{¶9} A defendant's petition for postconviction relief is a collateral civil attack on his or her criminal conviction. See *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 48. A defendant does not have a constitutional right to petition for postconviction relief; the only rights afforded to a defendant in a postconviction proceeding are those specifically granted by the legislature. *State v. Rackley*, 8th Dist.

Cuyahoga No. 102962, 2015-Ohio-4504, ¶ 10.

{¶10} R.C. 2953.21 and 2953.23 govern 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} There are strict time limits for seeking postconviction relief under R.C. 2953.21. Under the current version of R.C. 2953.21(A)(2), effective March 23, 2015, a petition for postconviction relief must be filed no later than 365 days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication or, if no appeal is taken, no later than 365 days after the expiration of time for filing the appeal. Under the prior version of the statute, the time period for filing the petition was 180 days after the trial transcript was filed in the court of appeals or 180 days after the deadline for filing an appeal. “This court considers the date of the triggering event, i.e., the filing of the postconviction petition, to determine which version of the statute governs.” *State v. Thomas*, 8th Dist. Cuyahoga No. 103784, 2016-Ohio-3327, ¶ 8-11. If a defendant’s petition is untimely or a defendant files a “second petition or successive petitions for similar relief,” a court “may not entertain” the petition for postconviction relief unless the petitioner satisfies the requirements of R.C. 2953.23(A).

{¶12} Pursuant to R.C. 2953.21(C) and (G), if the trial court dismisses or denies a timely petition for postconviction relief, the trial court shall issue findings of fact and conclusions of law. *State v. Hostacky*, 8th Dist. Cuyahoga No. 101282, 2015-Ohio-419, ¶ 9, citing *State v. Mapson*, 1 Ohio St.3d 217, 219, 438 N.E.2d 910 (1982). A judgment entry denying or dismissing a timely petition for postconviction relief that does not contain findings of fact or conclusions of law is not a final, appealable order. *Id.* at ¶ 10. However, the Ohio Supreme Court has held that a trial court “has no duty to issue findings of fact and conclusions of law on successive or untimely petitions for postconviction relief.” *State ex rel. George v. Burnside*, 118 Ohio St.3d 406, 2008-Ohio-2702, 889 N.E.2d 533, ¶ 6.

{¶13} Jones’ petition was filed on May 24, 2016, and, therefore, was governed by the 365-day period in amended R.C. 2953.21(A)(2). The record reflects that the transcript in Jones’ appeal from her resentencing in *State v. Jones*, 8th Dist. Cuyahoga No. 102260, 2016-Ohio-688, was filed on June 15, 2015. As such, Jones’ petition was timely, but only as to any alleged constitutional errors arising from her resentencing. *State v. Jackson*, 11th Dist. Trumbull No. 2013-T-0103, 2015-Ohio-7, ¶ 32-35; *State v. Seals*, 8th Dist. Cuyahoga No. 93198, 2010-Ohio-1980, ¶ 7-8; *State v. Williamson*, 8th Dist. Cuyahoga No. 104294, 2016-Ohio-7053, ¶ 21-23.

{¶14} In this instance, three of Jones’ four assignments of error from the denial of her petition for postconviction relief pertain to issues that arose from her plea hearing

and/or her original sentencing hearing and, therefore, those complaints are untimely.<sup>2</sup> These include Jones' challenge to her underlying conviction and the trial court's alleged violation of R.C. 2930.02 at her original sentencing hearing.<sup>3</sup> The dismissal without findings of Jones' petition was appropriate as to these arguments because they were untimely. The sole timely argument presented in Jones' petition stems from her allegation that her Sixth and Fifth Amendment rights were violated due to Milner's allegedly false statements that the trial court incorporated into its resentencing decision.

{¶15} Because Jones' petition was timely as to this alleged error and the trial court failed to issue findings of fact pursuant to R.C. 2953.21(C) we find that the trial court's journal entry is not a final, appealable order, and we lack jurisdiction to consider the appeal.

{¶16} 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.

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EILEEN A. GALLAGHER, PRESIDING JUDGE

MARY EILEEN KILBANE, J., CONCURS;  
SEAN C. GALLAGHER, J., DISSENTS WITH SEPARATE OPINION

SEAN C. GALLAGHER, J., DISSENTING:

{¶17} I respectfully dissent. I would affirm the trial court's judgment. The

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<sup>2</sup> None of the exceptions in R.C. 2953.23(A) are applicable here.



newest petition was entirely based on ineffective assistance of counsel for failing to rebut the victim’s unsworn statement in the 2013 sentencing hearing. The trial court did not consider any additional victim-impact statements at the resentencing — the hearing was merely correcting “technical errors” with the original sentencing, and the trial court specifically precluded Jones from introducing outside evidence. *State v. Jones*, 8th Dist. Cuyahoga No. 102260, 2016-Ohio-688, ¶ 8. Jones failed to raise a timely petition under R.C. 2953.21 to challenge the effectiveness of her 2013 trial counsel regarding the victim-impact statements at the time they could have conceivably been challenged. No findings of fact or conclusions of law were required. *State v. Connors*, 1st Dist. Hamilton No. C-040677, 2005-Ohio-2644, ¶ 7 (findings of fact and conclusions of law are unnecessary if the trial court lacks jurisdiction to address the petition); *State ex rel. Carroll v. Corrigan*, 84 Ohio St.3d 529, 1999-Ohio-367, 705 N.E.2d 1226 (no findings of fact or conclusions of law are necessary in denying successive petitions for postconviction relief).

{¶18} In her earlier appeal, in considering the two-prong standard, it was concluded that Jones’s resentencing counsel did not render ineffective assistance of counsel during the resentencing hearing because “[n]othing in the record indicates what evidence could have been presented regarding the victims’ statements to the trial court at Jones’s [re]sentencing hearing” and “establishing Jones’s claim that the victims provided false information to the trial court would require proof outside the record, which is not

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<sup>3</sup> These issues also could have been addressed had she raised them in her prior appeals.

appropriately considered on a direct appeal.” *Jones* at ¶ 50. That latter statement was not an invitation to submit tax or title records demonstrating the veracity of her allegations that the victims lied during the 2013 hearing. Jones cannot file an untimely petition based on newly discovered evidence under R.C. 2953.23. *State ex rel. Kimbrough v. Greene*, 98 Ohio St.3d 116, 2002-Ohio-7042, 781 N.E.2d 155, ¶ 13 (trial court is not required to issue findings of fact or conclusions of law if defendant fails to allege facts necessary to invoking the trial court’s jurisdiction, including whether he was unavoidably prevented from discovering new facts entitling him to relief). She pleaded no contest and cannot show that but for the constitutional error at trial, the new evidence would have mattered. R.C. 2953.23(A)(1). The panel’s statement merely reflects black-letter law. Appellate panels cannot consider information outside the record on direct appeal.

{¶19} Jones’s objection to an unsworn victim-impact statement at a 2013 sentencing hearing cannot be the proper subject of the newest petition for postconviction relief. That 2013 sentencing hearing was supplanted by a subsequent sentencing hearing in 2014 at which time Jones’s sentence was actually reduced. Jones did not properly invoke the trial court’s jurisdiction under R.C. 2953.21, and for these reasons, I would affirm.