

[Cite as *Brooklyn v. Woods*, 2017-Ohio-2861.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 105065

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**CITY OF BROOKLYN**

PLAINTIFF-APPELLEE

vs.

**WILLIAM WOODS**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Parma Municipal Court  
Case No. 14 CRB-03624

**BEFORE:** Jones, J., McCormack, P.J., and Blackmon, J.

**RELEASED AND JOURNALIZED:** May 18, 2017

**FOR APPELLANT**

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LARRY A. JONES, SR., J.:

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

{¶2} In 2014, Woods was charged with petty theft after he was involved in an incident at the Walmart store located in Brooklyn, Ohio. The matter was tried to the court in the Parma Municipal Court, and the court found Woods guilty of the charge. The court sentenced him to 180 days in jail, with 170 days credit for time served and imposed a \$250 fine. Woods appealed, and this court affirmed the conviction. *Brooklyn v. Woods*, 8th Dist. Cuyahoga No. 102120, 2016-Ohio-1223. The following facts are primarily summarized from this court's opinion in the direct appeal.

{¶3} In June 2014, Woods was a customer at the subject Walmart. Two asset protection specialists who worked for the store testified at trial. According to their testimony, they saw Woods go into the store's electronics department and place in his cart a TV wall mount that retailed for \$99.96 and an electronic accessory that retailed for \$17.96. The specialists then saw Woods leave the electronics department and go to an aisle in the store where grocery items were sold. The two specialists continued to observe Woods while he was in the grocery aisle, and saw him peel off the Universal Product Code ("UPC") sticker from the less expensive accessory box and place it over the UPC sticker on the box containing the wall mount. One of the specialists testified that Woods left the accessory box "behind" and proceeded to a check out line, where he paid \$17.96 for the wall mount. The specialists stopped Woods before he left the store and

escorted him to the assets protection office, where he eventually admitted that he had switched the “price tags.”

{¶4} One of the specialists testified about the security cameras in the store, explaining that they were in a “fixed” position. The specialist testified that, because of the “fixed” position of the cameras, the camera located near the grocery aisle where Woods switched the UPC sticker did not capture Woods doing so. During cross-examination of that specialist, defense counsel attempted to play the portion of the surveillance video from when Woods was in the electronics department, but due to technological difficulties, was unable to do so.<sup>1</sup> The city and defense agreed to mark the video as “heard and submitted” and it was admitted into evidence as a joint exhibit. In rendering its decision, the court referenced the video and stated that it had “carefully review[ed] all of the evidence that was submitted.”

{¶5} In his direct appeal, Woods challenged the conviction based on the following grounds: (1) ineffective assistance of his counsel; (2) manifest weight of the evidence; (3) sufficiency of the evidence; and (3) lack of due process and a fair trial. After his conviction was affirmed, Woods filed an App.R. 26 application to reopen his direct appeal, which was denied. *Brooklyn v. Woods*, 8th Dist. Cuyahoga No. 103120, 2016-Ohio-7603. Woods also filed a petition for postconviction relief in the trial court, which was denied, and is the subject of this appeal, with the following assignments of

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<sup>1</sup>The city prosecutor stated that because of the format of the video she had not previously viewed it either.

error presented for our review:

I. The trial court erred by denying the petition for post-conviction relief when the prosecuting attorney failed to respond by answer or motion.

II. The trial court erred in its denial of post-conviction relief by giving insufficient findings of fact and conclusions of law.

III. The trial court erred in its denial of post-conviction relief by failing to grant an evidentiary hearing.

IV. The petitioner's constitutional right to due process [was] violated by having his petition heard by the same sentencing court.

{¶6} In his first assignment of error, Woods contends that this matter should be remanded to the trial court because the city prosecutor failed to respond to his petition, as required under R.C. 2953.21(E), which provides in relevant part that, “[w]ithin ten days after the docketing of the petition, or within any further time that the court may fix for good cause shown, the prosecuting attorney shall respond by answer or motion.” Thus, Woods is correct that the section does state that the prosecuting attorney is to respond to a petition for postconviction relief.

{¶7} But, regardless of whether the prosecution responds, the trial court is required, under R.C. 2953.21(D), to “determine whether there are substantive grounds for relief.” The section provides that in making its determination, the court “shall consider, in addition to the petition, the supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court’s journal entries, the journalized records of the clerk of the court, and the court reporter’s transcript.” *Id.* Thus, the trial court “must independently review the evidence in each case and address the substance of a

petitioner's claims regardless of whether the state responds." *State v. Fluker*, 9th Dist. Lorain No. 94CA005793, 1994 Ohio App. LEXIS 2159, 3 (May 18, 1994).

{¶8} As will be discussed below, the trial court independently reviewed Woods's claims. Thus, his first assignment of error is without merit.

{¶9} For his second assigned error, Woods challenges the trial court's findings of fact and conclusions of law, contending that they were insufficient. In his third assignment of error, he contends that the trial court erred by failing to hold a hearing on the petition. We disagree with both contentions.

{¶10} A trial court's decision granting or denying a petition for postconviction relief should be upheld absent an abuse of discretion; "a reviewing court should not overrule the trial court's finding on a petition for post-conviction relief that is supported by competent and credible evidence." *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 58. "A trial court abuses its discretion when its decision is unreasonable, arbitrary, or unconscionable." *State v. Knauff*, 4th Dist. Adams No. 13CA976, 2014-Ohio-308, ¶ 19.

{¶11} A petitioner seeking postconviction relief is not automatically entitled to an evidentiary hearing. *State v. Calhoun*, 86 Ohio St.3d 279, 282, 714 N.E.2d 905 (1999). Rather, before granting a hearing on a petition, the trial court must first determine that substantive grounds for relief exist. R.C. 2953.21(D). "Substantive grounds for relief exist and a hearing is warranted if the petitioner produces sufficient credible evidence that demonstrates the petitioner suffered a violation of the petitioner's constitutional rights."

*In re B.C.S.*, 4th Dist. Washington No. 07CA60, 2008-Ohio-5771, ¶ 11. Furthermore, in order to merit a hearing, the petitioner must show that the claimed “errors resulted in prejudice.” *Id.*, quoting *Calhoun* at 283.

{¶12} Res judicata applies to proceedings involving postconviction relief. *State v. Szefcyk*, 77 Ohio St.3d 93, 95, 671 N.E.2d 233 (1996).

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 of conviction, or on an appeal from that judgment.

*State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus.

“Therefore, ‘any issue that could have been raised on direct appeal and was not is res judicata and not subject to review in subsequent proceedings.’” *State v. Segines*, 8th Dist. Cuyahoga No. 99789, 2013-Ohio-5259, ¶ 8, quoting *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, ¶ 16.

{¶13} In his postconviction petition, Woods sought relief based on the following grounds: (1) perjured testimony of the asset protection specialists; (2) the city’s failure to disclose exculpatory evidence; (3) ineffective assistance of counsel; and (4) unfair trial proceedings. He did not submit any affidavits or other documentary evidence in support of his claims.

{¶14} In regard to his claim of the specialists’ perjured testimony, Woods contended that “[u]pon checking the access history of the video it was discovered that the last time that it was viewed was the day before trial and so the judge clearly never

watched the video or considered it upon rendering her decision.” According to Woods, the video “clearly shows” that he never had the cheaper priced item in his cart.

{¶15} Woods further claimed the specialists’ testimony was perjured because he would have needed glue to attach the sticker from one box to the other as the specialists contended he had done; that he was not in the view of the specialists when he was in the grocery section of the store; and a Walmart employee stated that the store had an ongoing problem with wrong UPC labels being on merchandise and apologized to Woods for the incident.

{¶16} For his claim of the city’s failure to provide exculpatory evidence, Woods contended that the prosecutor failed to provide the subject merchandise boxes, the UPC label, the police report, and videos from other cameras in the grocery area where the city maintained he switched the price and in the electronics department.

{¶17} Woods’s ineffective assistance of counsel claim was based on his contention that his attorney suggested that he plead to the charge, that his attorney did not allow him to view the video, and his attorney’s failure to use the video at trial. His claim of an unfair trial was based on the trial court’s failure to separate the two asset protection specialists at trial, the trial court’s admission of the video into evidence without ascertaining that it was authentic, and Woods’s contention that the trial court did not view the video.

{¶18} All of Woods’s contentions were issues that either were, or could have been, raised in his direct appeal. He was, therefore, barred under the doctrine of res judicata



from raising them in his petition for postconviction relief. Further, in its findings of fact and conclusions of law, the trial court agreed with Woods that the video “did not capture any criminal activity.” Nonetheless, after considering and weighing the evidence, the court found him guilty. The trial court found that, “after review, \* \* \* there was [no] such \* \* \* denial of infringement of [Woods’s] rights as to render the judgment void or voidable.” On this record, the trial court independently reviewed Woods’s claims, adequately addressed them, and Woods was not entitled to a hearing. The second and third assignments of error are overruled.

{¶19} In his final assignment of error, Woods contends that his constitutional right to due process was violated because the sentencing judge, as opposed to a different judge, considered his petition for postconviction relief. According to Woods, because the sentencing judge did not view the video, she was not impartial enough to decide the postconviction petition. We find no merit to Woods’s contention that the trial court judge did not view the video; she said she did, and as mentioned, admitted that it did not implicate Woods of criminal activity; Woods offers nothing more than his self-serving statement that she did not.<sup>2</sup> Further, this court, in deciding Woods’s direct appeal, viewed the video and found that it was “not definitive given the limitations of the camera angle,” and thus, deferred to the trial court’s interpretation of the video vis-à-vis the

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<sup>2</sup>*State v. Coleman*, 2d Dist. Clark Nos. 04CA43 and 04CA44, 2005-Ohio-3874, ¶ 17 (“A petitioner is not entitled to a hearing if his claim for relief is belied by the record and is unsupported by any operative facts other than Defendant’s own self-serving affidavit or statements in his petition, which alone are legally insufficient to rebut the record on review.”).

testimony of the two specialists. *Woods*, 8th Dist. Cuyahoga No. 103120, 2016-Ohio-1223, ¶ 37.

{¶20} Finally, R.C. 2953.21(A)(1)(a), governing petitions for postconviction relief, requires that they be filed in the court that imposed sentence:

Any person who has been convicted of a criminal offense \* \* \* and 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 sentence, stating the grounds for relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief.

{¶21} In light of the above, *Woods*'s fourth assignment of error is overruled.

{¶22} Judgment 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 Parma Municipal 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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LARRY A. JONES, SR., JUDGE

TIM McCORMACK, P.J., and  
PATRICIA ANN BLACKMON, J., CONCUR