

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 24510

Appellee

v.

ANTONIO M. BROOKS

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 1992 09 2196

DECISION AND JOURNAL ENTRY

Dated: May 20, 2009

BELFANCE, Judge.

{¶1} The Appellant, Antonio M. Brooks, appeals the Summit County Court of Common Pleas’ denial of his “Common Law Petition to Vacate and Void Judgment.” We affirm the trial court’s ruling.

FACTS

{¶2} In 1993, a jury found Appellant, Antonio M. Brooks, guilty of three counts of aggravated murder and sentenced him to death. His conviction and sentence were upheld by this Court in *State v. Brooks* (July 13, 1994), 9th Dist. No. 16192. The Supreme Court of Ohio also upheld his conviction, but remanded for resentencing. *State v. Brooks* (1996), 75 Ohio St.3d 148. Upon remand, the trial court did not impose the death penalty, but sentenced Brooks to three life sentences. The resentencing hearing was held on May 16, 1996. The State appealed the resentencing, but the sentence was upheld by this Court in *State v. Brooks* (1997), 118 Ohio

App.3d 444, appeal not allowed (1997), 78 Ohio St.3d 1517. Brooks is currently serving a life sentence in prison and is not eligible for parole until 2091.

{¶3} On August 19, 2008, he filed in the trial court what he styled as a “Common Law Petition to Vacate and Void Judgment.” In that petition, he argued that the trial court was without jurisdiction to sentence him because he is not the person identified by the original indictment. Brooks asserts that his actual name, date of birth, and social security number differ from those listed on the indictment. Thus, he argues, the trial court lacked jurisdiction. The Summit County Court of Common Pleas denied the petition, ruling that it was either an untimely motion for postconviction relief, or a misfiled writ of habeas corpus.

{¶4} In his appeal, Brooks contends that the trial court abused its discretion by misconstruing and denying his petition as either a motion for postconviction relief or as a writ of habeas corpus, and by failing to issue findings of fact and conclusions of law in its judgment entry denying the petition.

CHARACTERIZATION OF THE PETITION

{¶5} Brooks urges that his “Common Law Petition to Vacate and Void Judgment” should not be construed as a motion for postconviction relief. However, the law cited by Brooks provides for such a petition in a civil context. Brooks has not provided legal authority that a “common law petition to vacate and void judgment” is permitted in a criminal case.

{¶6} On the contrary, “[w]here a criminal defendant, subsequent to his or her direct appeal, files a motion seeking vacation or correction of his or her sentence on the basis that his or her constitutional rights have been violated, such a motion is a petition for postconviction relief as defined in R.C. 2953.21.” *State v. Reynolds* (1997), 79 Ohio St.3d 158, syllabus. Brooks’ petition fulfills the definition of a motion for postconviction relief: (1) the petition was filed after

his direct appeal; (2) he seeks to vacate his sentence as void, and; (3) in the petition, he alleged that his constitutional rights were violated when the trial court tried and sentenced him without appropriate jurisdiction due to defects in the indictment. Accordingly, the trial court did not err in construing Brooks' petition as a motion for postconviction relief.

POSTCONVICTION RELIEF

{¶7} Pursuant to R.C. 2953.21(A)(2), if a direct appeal has been taken, a motion for postconviction relief must be filed within 180 days following the date on which the trial transcript is filed with the court of appeals. If a direct appeal is not filed, the motion for postconviction relief must be filed within 180 days following the expiration of the time for filing the appeal. R.C. 2953.21(A)(2). The trial court is not permitted to consider motions filed outside of this period unless the conditions of R.C. 2953.23(A)(1) apply. R.C. 2953.23(A).

{¶8} Assuming without deciding that we look to the date of Brooks' resentencing, May 16, 1996, for purposes of calculating time for R.C. 2953.21(A)(2), the record on appeal from that judgment entry was filed in this Court on September 3, 1996. See R.C. 2953.21(A)(2). Thus, Brooks had until March 2, 1997, to file a timely motion for postconviction relief. Brooks' instant motion for postconviction relief was not filed until August 19, 2008, well outside of the timeframe provided by R.C. 2953.21(A)(2).

{¶9} Pursuant to R.C. 2953.23(A)(1), an untimely motion for postconviction relief may be heard by the trial court if both of the following apply:

“(a) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, subsequent to the period prescribed in division (A)(2) of section 2953.21 of the Revised Code or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right.

“(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted or, if the claim challenges a sentence of death that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.”

{¶10} Brooks has not argued that either exception applies to his case. Therefore, the trial court appropriately denied Brooks’ petition as an untimely motion for postconviction relief. This assignment of error is overruled.

{¶11} Brooks also argues that the trial court erred by not issuing findings of fact and conclusions of law when it denied his petition. In light of the above determinations, this argument is not well taken. A trial court is not required to issue findings of fact and conclusions of law when denying an untimely motion for postconviction relief. *State ex rel. Kimbrough v. Greene*, 98 Ohio St.3d 116, 2002-Ohio-7042, at ¶ 6. Brooks’ assignment of error is overruled.

CONCLUSION

{¶12} Despite its caption, the trial court properly determined that Brooks’ petition was a motion for postconviction relief and properly denied it as untimely. We therefore overrule Brooks’ assignments of error.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE
FOR THE COURT

CARR, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

ANTONIO M. BROOKS, pro se, Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.