

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27506

Appellee

v.

TROY COLEMAN

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 10 10 2775

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 4, 2015

CARR, Judge.

{¶1} Appellant, Troy Coleman, appeals the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} This matter arises out of Coleman’s convictions in 2011, for aggravated vehicular assault, driving under suspension, and operating a vehicle under the influence. After pleading guilty to the charges, Coleman was sentenced to seven years in prison and ordered to pay \$55,000 in restitution. He also received a ten-year driver’s license suspension. This Court affirmed Coleman’s convictions. *State v. Coleman*, 9th Dist. Summit No. 26008, 2012-Ohio-1712. Nearly three years after he was convicted, Coleman filed a pro se motion for discovery in the trial court. The trial court construed the motion as a petition for post-conviction relief and denied it.

{¶3} On appeal, Coleman raises two assignments of error.

II.

ASSIGNMENT OF ERROR I

TRIAL COUNSEL'S NUMEROUS DEFICIENCIES AND FAILURE TO INVESTIGATE IN ORDER TO STRUCTURE A PLAUSIBLE DEFENSE PRIOR TO ADVISING DEFENDANT TO PLEA[D] GUILTY NOT ONLY CAUSED CUMULATIVE PREJUDICE BUT VIOLATED THE 4TH AND 6TH AMENDMENTS TO THE U.S. CONSTITUTION AND VIOLATED CRIMINAL RULES 16(A), (D), AND 12(D) OF COURT ROOM PROCEDURES AND ADVOCATE RULE 3.1(A), AND (2) UNDER OHIO RULES OF PROFESSIONAL CONDUCT.

ASSIGNMENT OF ERROR II

TRIAL COURT AND COUNSEL'S FAILURE TO INQUIRE INTO ALLIED OFFENSES AT SENTENCING HEARING IS PLAIN ERROR AND VIOLATES THE 8TH AMENDMENT TO THE U.S. CONSTITUTION AND [CRIM.R.] 52(B).

{¶4} In his first assignment of error, Coleman contends that trial counsel was ineffective for failing to adequately request discovery. In his second assignment of error, Coleman contends the trial court sentenced him on allied offenses. This Court disagrees.

{¶5} While Coleman raises multiple issues on appeal pertaining to trial counsel's performance, we note that the sole issue raised in his March 7, 2014 motion in the trial court was discovery. Specifically, Coleman requested discovery of "all facts pertaining to [Case. No.] 10 2775" on account of the fact that trial counsel had failed to do so. As this Court would exceed its role as a reviewing court if it addressed issues in the first instance that were not first raised in the trial court, our review is limited to the issue raised in Coleman's motion. *State v. George*, 9th Dist. Summit No. 27279, 2014-Ohio-5781, ¶ 32. With respect to Coleman's discovery request, this Court has repeatedly held that there is no right to discovery in a post-conviction proceeding. *State v. Ross*, 9th Dist. Summit No. 27180; 2014-Ohio-2038, ¶ 13; *State v. Craig*, 9th Dist. Summit No. 24580, 2010-Ohio-1169, ¶ 6; *State v. Smith*, 9th Dist. Summit

No. 24382, 2009-Ohio-1497, ¶ 18. As Coleman's post-conviction motion attempted to raise a constitutional issue, the trial court correctly construed the motion as a petition for post-conviction relief. *State v. Kyle*, 9th Dist. Summit No. 25974, 2012-Ohio-456, ¶ 6; *State v. Kellwood*, 9th Dist. Medina No. 2992-M, 2000 WL 422398, *1 (Apr. 19, 2000).

{¶6} Pursuant to R.C. 2953.21(A)(2), a petition for post-conviction relief must be filed no later than 180 days after the day the trial transcript is filed in the direct appeal from the judgment of conviction and sentence, or, if no direct appeal is taken, 180 days after the expiration of the time to file an appeal. A trial court is not permitted to entertain a petition that is filed after the time frame unless the conditions of R.C. 2953.23(A)(1) or (A)(2) are met. *State v. Hoffmeyer*, 9th Dist. Summit No. 25477, 2011-Ohio-1046, ¶ 7; R.C. 2953.23(A). Specifically, R.C. 2953.23(A) states:

Whether a hearing is or is not held on a petition filed pursuant to section 2953.21 of the Revised Code, a court may not entertain a petition filed after the expiration of the period prescribed in division (A) of that section or a second petition or successive petitions for similar relief on behalf of a petitioner unless division (A)(1) or (2) of this section applies:

(1) 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.

(2) The petitioner was convicted of a felony, the petitioner is an offender for whom DNA testing was performed under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code, and the results of the DNA testing establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death.

{¶7} As noted above, Coleman filed his petition almost three years after he was convicted, well outside the 180-day window set forth in R.C. 2953.21(A)(2). A substantive review of Coleman's petition reveals that his argument pertained solely to the discovery issue, and he made no attempt to satisfy the conditions of R.C. 2953.23(A)(1) or (A)(2). Under these circumstances, where Coleman did not comply with the statutory requirements for filing a petition for post-conviction relief, the trial court was without authority to address the merits of the untimely petition.

{¶8} Coleman's assignments of error are overruled.

III.

{¶9} Coleman's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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(C). 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.

DONNA J. CARR
FOR THE COURT

HENSAL, P. J.
MOORE, J.
CONCUR.

APPEARANCES:

TROY COLEMAN, pro se, Appellant.

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