

IN THE OHIO SUPREME COURT

21-0907

STATE OF OHIO,

Supreme Court No. _____

(By Clerk)

Plaintiff-Appellee,

Hamilton App. No. C19o382
Hamilton C.P. No. B-16o122

-vs-

JAMES WILLIAMS,

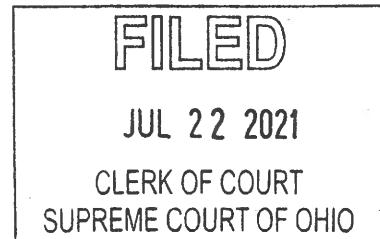
Defendant-Appellant.

Defendant-Appellant Williams' Memorandum In Support of
Claimed Jurisdiction

FOR THE PLAINTIFF-APPELLEE
STATE OF OHIO

JOSEPH T. DETERS
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FOR THE DEFENDANT-APPELLANT
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CLERK OF COURT
SUPREME COURT OF OHIO

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APPENDIX

JUDGMENT ENTRY OF COURT OF APPEALS
NOTICE OF APPEAL
MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
AFFIDAVIT IN SUPPORT OF FORMA PAUPERIS APPLICATION

WHY THE CASE INVOLVES SUBSTANTIAL
CONSTITUTIONAL QUESTIONS OF LAW

WHY THE CASE IS OF GREAT OR GENERAL
PUBLIC INTEREST

This case involves substantial constitutional questions of law because if the Court invokes its appellate jurisdiction the issues will include resolution of did the trial and appellate court deprive the defendant-appellant of his absolute right to access to the courts and his fundamental right to be heard. The right to access to the courts being an absolute procedural due process right and the right to be heard a jurisdictional structural defect error.

The case is of great or public interest because the court of appeals held that the defendant-appellant could not pursue postconviction relief at the same time his direct appeal was pending when Ohio Revised Code Section 2953.21(C) flatly says the opposite.

STATEMENT OF THE CASE AND FACTS

The defendant-appellant was indicted for two counts of aggravated vehicular homicide and two counts of operating a motor vehicle under the influence of alcohol or drugs. Following a jury trial he was found guilty of both counts of aggravated vehicle homicide and one count of operating a vehicle under the influence of alcohol or drugs. The offenses were merged at sentencing and he was sentenced to a prison term of eight (8) years in prison.

He was sentenced in October, 2018.

He filed a petition for postconviction relief under R.C. Section 2953.21 in October, 2019 while a direct appeal was pending in the First District Court of Appeals of Ohio for Hamilton County.

The Court of Appeals affirmed the conviction and sentence on April 8th, 2020.

The State of Ohio filed a motion to dismiss the postconviction petition on November 18, 2019 based upon the doctrine of res judicata.

Without affording the appellant the opportunity to be heard thru a reply to the motion to dismiss, the trial court summarily dismissed the postconviction petition on November 21, 2019.

The defendant-appellant timely appealed the summary dismissal to the Hamilton County Court of Appeals who ultimately dismissed the appeal holding that the trial court had no jurisdiction to entertain the R.C. 2953.21 application while the direct appeal was pending.

This timely appeal to this Ohio Supreme Court ensues.

POSITION OF LAW NO. 1.

The trial court erred to the prejudice of the defendant where the court summarily dismisses the petition for postconviction relief without making and filing written findings of facts with conclusions of law relative to the decision to dismiss in violation of the appellant's absolute right to procedural due process of law as guaranteed under the Ohio and U.S. Constitution

Law & Argument

In the petition for relief after judgment, the appellant alleged that he was deprived of the effective assistance of trial counsel where the attorney failed to recognize, argue and brief the violation of the appellant's right to a speedy trial and that his conviction was secured in violation of the double inference rule and therefore the Due Process Clause of the Ohio and United States Constitution.,

The State of Ohio responded by filing a motion to dismiss based upon the doctrine of res judicata.

However, this Supreme Court of Ohio has already mandated that the doctrine of res judicata may not support a motion to dismiss because Ohio Civil Rule 8 lists the affirmative defenses that may be applied in civil cases and res judicata is not listed. Cf. State ex rel. Freeman v. Morris, (1991), 62 Ohio St. 3d 107.

Likewise, the State of Ohio couldn't have been entitled to summary judgment pursuant to Ohio Civil Rule 56(C), either, because summary judgment motions pre-hearing or trial are based upon evidentiary documents demonstrating that no genuine issues of material fact remain in the case

and that the evidence is so one-sided that that party must prevail as a matter of law. Cf. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242 (1986); *Wing v. Anchor Media Ltd. of Texas*, (1991), 59 Ohio St. 2d 108.

In the instant case the State of Ohio adduced no documents at all only the frivolous defense of res judicata, but yet was awarded a summary judgment by the trial court.

This was prejudicial reversible error.

PROPOSITION OF LAW NO. 2.

It was prejudicial error for both the trial and appellate court to summarily dismiss the petition for postconviction relief and the appeal therefrom without making and findings written findings of facts and conclusions of law relative thereto

Law & Argument

The trial court in summarily dismissing the petition for relief after judgment failed to make any findings of fact and conclusions of law. The Court of Appeals merely held that the trial court was without jurisdiction to adjudicate the petition because the case was pending in that court on direct appeal.

Both courts committed prejudicial error.

The trial court committed prejudicial error and denied the appellant both due process of law and the equal protection of law by not making an filing written findings of fact and conclusions of law relative to the summary dismissal of the petition in that court. Cf. *State v. Lester*, (1975), 42 Ohio st. 2d 51, paragraph two of the syllabus, where this Supreme Court of Ohio held that:

"If the court finds no grounds for a hearing, the court is required to make and file written findings of fact and conclusions of law as to the reasons for dismissal and as to the grounds for relief relied upon in the petition. *State v. Lester*, (1975), 42 Ohio St. 2d 51, syllabus two. Failure to make findings of fact and conclusions of law is prejudicial error. *State v. Brown*, (1974), 41 Ohio App. 2d 181.

Therefore, it was prejudicial reversable error in violation of the appellant's absolute right to procedural due process of law under the Ohio and U.S. Constitution for the trial court to summarily dismiss the postconviction petition without first making and filing written findings of fact and conclusions of law which had the affect of awarding the plaintiff an undeserved summary judgment.

Accordingly, prejudicial and reversable error occurred .

PROPOSITION OF LAW NO. 3.

It was prejudicial error and a violation of the defendant's absolute right to procedural due process of law asguaranteed by the Ohio and U.S. Constitution for the court not to order and conduct an evidentiary hearing in this case

Law & Argument

-- The United States Supreme Court has made it black-letter that the defendant-appellant had an 'absolute right to procedural due proess of law in this case. Cf. *Carey v. Piphus*, 435 U.S. 279 (1978).

In *State v. Milanovich*, (1975), 42 Ohio St. 2d 46 at syllabus, this Supreme Court held that where the appellant's petition for relief is sufficient upon its face to raise an issue that the conviction is void or voidable on constitutional grounds and cannot be determined by examination of the files and records of the case, the petition states substantive grounds for relief. Id.

In addition, this Court in *State v. Hester*, (1976), 45 Ohio St.2d 71, at Syllabus held that where the issue of competent counsel had not been adjudicated, then the doctrine of res judicata is an improper basis to dismiss the petition. Id.

Accordingly, since Ohio Civil Rule 12(c) in lieu of record evidence to the contrary mandated that the trial court, court of appeals and this Court at the pleading stage of these proceedings accept the appellant's allegations in the petition as true with all reasonable inferences to be drawn therefrom; Cf. *Peterson v. Teodosio*, 34 Ohio St. 2d 161 (1973) that the appellant may have been deprived of the effective assistance of counsel where he failed to seek dismissal of the case based upon speedy trial grounds and because he failed to seek an acquittal based upon the trier of fact finding guilt after violation of the double inference rule.

For all of the foregoing reasons it was prejudicial error for the trial court not to have ordered and held an evidentiary hearing in this case before rendering judgment.

Reversal and remand is warranted.

PROPOSITION OF LAW NO. 4.

It was prejudicial error in violation of the appellant's absolute right to procedural and substantive due process of law as well as the equal protection of law for the court of appeals to affirm, the trial court's summary dismissal of the case holding that the trial court lacked jurisdiction to act because a direct appeal was pending in the court of appeals

LAW & ARGUMENT

Eventhough the appellant timely filed his notice of appeal in the court of appeals in this case, the court of appeals summarily dismissed the appeal for the reason that the court believed that the trial court lacked jursdiction to adjudicate the petition for postconviction relief because an appeal was pending in that court.

However, Ohio Revised Code Section 2953.21(C) provides that:

"The court shall consider a petition that is timely filed under division (A)(2) of this section, even if a direct appeal is pending". (emphasis added.)
Before granting a hearing a hearing on a petition filed under division (A) of this section, the court shall determine whether there are substantive grounds for relief. In making such a determination, the court shall consider in addition to the petition, the supporting affidavits, the evidentiary evidence, all the files and records pertaining to the proceedings including, but not limited to the indictment, the court's jounalized entries, the journalized records of the clerk of court and the curt reporter's transcript. (emphasis added.)

Since in the instant case it was plain error for the court of appeal to conclude that the trial court lacked jurisdiction to adjudicate the petition in spite of a direct appeal pending in light of the mandate in R.C. 2953.23(C), which had the affect of denying the appellant access to the courts while at the same time denying him the jurisdictional right for the oppropnunity to be heard, a federal constitutional . . .
structural defect error. Cf. LaChance v. Erickson, Reversal and remand therefore is warranted.

CONCLUSION

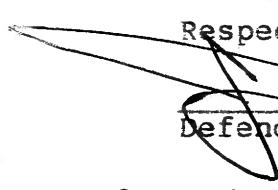
This case clearly presents substantial constitutional questions of law because it will reaffirm this Court's prior jurisprudence as a criminal defendant's absolute right to procedural due process of law which may not be arbitrarily denied.

The case is of great or general public interest because it will reassure the public that procedural due process is still being observed such as the jurisdictional right to be heard.

Therefore, for all of the foregoing reasons this Supreme Court's appellate jurisdiction should be invoked.

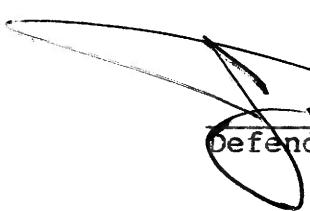
It Is So Prayed For

Respectfully submitted,


Defendant-Appellant

Certificate of Service

This is to certify that a copy of the foregoing memorandum in support of claimed jurisdiction was served by regular mail upon Joseph T. Deters, Hamilton County Prosecutor at 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202 this 20th day of July, 2021.


Defendant-Appellant

APPENDIX

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,

APPEAL NO. C-210326
TRIAL NO. B-1600122

Plaintiff-Appellee,

vs.

ENTRY DISMISSING APPEAL AND
DENYING MOTION FOR
PREPARATION OF TRANSCRIPT OF
PROCEEDINGS AT STATE EXPENSE

JAMES WILLIAMS,

Defendant-Appellant.

This cause came on to be considered upon appellant's motion for leave to file appeal as of right and motion for preparation of transcripts at state expense.

Appellant seeks to appeal the trial court's decision denying his "Petition for Relief after Judgment and Motion to Vacate or Set Aside Conviction and Sentence," which he filed on October 17, 2019. But appellant filed a direct appeal from his original conviction on October 3, 2018. This court affirmed his conviction on April 8, 2020, in *State v. Williams*, 1st Dist. Hamilton No. C-180574, 2020-Ohio-1367.

The filing of the direct appeal divested the trial court of jurisdiction while the appeal was pending. *See State v. Thomas*, 1st Dist. Hamilton Nos. C-100411 and C-100412, 2011-Ohio-1331; *State v. Brown*, 1st Dist. Hamilton No. C-081026, 2009-Ohio-5347. Because appellant's petition was filed while his direct appeal was pending, the trial court lacked jurisdiction to rule on the petition. Consequently, we dismiss the appeal and deny appellant's motion for preparation of transcripts at state expense.

To The Clerk:

Enter upon the Journal of the Court on JUN 22 2021 per order of the Court.

By: Beth A. Myers
Presiding Judge

(Copies sent to all counsel)