

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 26AP-87
Plaintiff-Appellee,	:	(C.P.C. No. 20CR-4371)
v.	:	
	:	(ACCELERATED CALENDAR)
Kenneth L. Houser, Jr.,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 27, 2026

On brief: *Shayla D. Favor*, Prosecuting Attorney, and
Benjamin A. Tracy, for appellee.

On brief: *Kenneth L. Houser, Jr.*, pro se.

APPEAL from the Franklin County Court of Common Pleas

DINGUS, J.

{¶ 1} Defendant-appellant, Kenneth L. Houser, Jr., appeals from a judgment of the Franklin County Court of Common Pleas denying his petition for post-conviction relief. For the reasons that follow, we affirm.

I. Facts and Procedural History

{¶ 2} In September 2020, a Franklin County Grand Jury indicted Houser on one count of gross sexual imposition, in violation of R.C. 2907.05, and three counts of rape, in violation of R.C. 2907.02. The matter went to trial in October 2024, and Houser was found guilty on all counts. The trial court sentenced Houser to five years in prison for the gross sexual imposition count and to life in prison without parole for each of the rape counts. He timely appealed, and the trial court record was filed in this court on December 3, 2024. On December 18, 2025, and during the pendency of his appeal, Houser filed a post-conviction

petition along with other documents relating to that petition, including a motion to deem the petition as timely filed and motions for appointment of counsel and for expert assistance. On January 7, 2026, the trial court denied Houser's post-conviction petition and the associated motions. The next day, this court affirmed the trial court's judgment of conviction and sentence. *State v. Houser*, 2026-Ohio-32 (10th Dist.).

{¶ 3} Houser has timely appealed from the trial court's January 7, 2026 judgment.

II. Assignments of Error

{¶ 4} Houser assigns the following four assignments of error for our review:

[I.] The trial court erred and abused its [sic] discretion when it dismissed appellant's petition for post-conviction relief as untimely, where the failure to meet the filing deadline was due to circumstances of unavoidable prevention beyond appellant's control in violation of his fifth, and fourteen[th] amendment rights under the United States constitution and section 14, article I, of the Ohio constitution, depriving him of a fundamentally fair outcome.

[II.] The trial court erred by denying appellant's petition for post-conviction relief without an evidentiary hearing where the petition and attached evidence presented sufficient operative facts to establish substantive grounds for relief in violation of his fifth, and fourteen[th] amendment rights under the United States constitution and section 14, article I, of the Ohio constitution, depriving him of a fundamentally fair outcome.

[III.] The trial counsel Edward C. Corley provided ineffective assistance by failing to investigate and present a complete defense, he failed to secure necessary expert testimony and abdicated his duty to investigate known sources of exculpatory and impeachment evidence, violating the sixth, and fourteenth amendment right under the United States constitution and section 14, article I, of the Ohio constitution.

[IV.] The trial counsel Mr. Edward C. Corley provided ineffective assistance by completely failing to investigate and present mitigating evidence at the sentencing hearing for offense[s] carrying mandatory life-without-parole sentences, in violation of the sixth, and fourteenth amendment rights under the United States constitution and section 14, article I, of the Ohio constitution.

III. Discussion

{¶ 5} Because they involve interrelated issues, we discuss together all four of Houser’s assignments of error. In his first assignment of error, Houser contends that the trial court erred in denying his post-conviction petition because the untimely filing was due to circumstances beyond his control. Houser’s second assignment of error alleges that the trial court erred in denying his post-conviction petition because he submitted sufficient operative facts to establish substantive grounds for relief. And his third and fourth assignments of error allege that he received ineffective assistance of trial counsel, which was the basis of his post-conviction petition. In view of the judgment appealed from, we construe all four of Houser’s assignments of error as challenging the trial court’s denial of his post-conviction petition. This challenge has no merit.

{¶ 6} A person convicted of a crime may assert a civil, collateral attack of the conviction upon showing 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.” R.C. 2953.21(A)(1)(a)(i). Such a petition for post-conviction relief “ ‘is a means to reach constitutional issues which would otherwise be impossible to reach because the evidence supporting those issues is not contained in the record.’ ” *State v. Sidibeh*, 2013-Ohio-2309, ¶ 8 (10th Dist.), quoting *State v. Murphy*, 2000 Ohio App. LEXIS 6129, *5 (10th Dist. Dec. 26, 2000). A post-conviction petition does not provide a petitioner with a second opportunity to litigate his or her conviction. *Id.* at ¶ 8, citing *State v. Hessler*, 2002-Ohio-3321, ¶ 23 (10th Dist.). Instead, R.C. 2953.21 affords a petitioner post-conviction relief “ ‘only if the court can find that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable under the Ohio Constitution or the United States Constitution.’ ” *Id.*, quoting *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph four of the syllabus.

{¶ 7} Pursuant to R.C. 2953.21(A)(2), a petition for post-conviction relief must be filed no later than 365 days after the trial transcript is filed in the court of appeals in the direct appeal. A trial court may not entertain an untimely or successive post-conviction petition unless the petitioner initially demonstrates either (1) he was unavoidably prevented from discovering the facts necessary for the claim for relief, or (2) the United States Supreme Court recognized a new federal or state right that applies retroactively to

persons in the petitioner's situation. R.C. 2953.23(A)(1)(a). If the petitioner can satisfy one of those two conditions, he must also demonstrate that but for the constitutional error at trial no reasonable finder of fact would have found him guilty. R.C. 2953.23(A)(1)(b). Alternatively, a trial court may consider such a petition if the petitioner satisfies R.C. 2953.23(A)(2), which relates to claims of actual innocence based on DNA testing. These requirements are jurisdictional. *State v. Hollingsworth*, 2009-Ohio-1753, ¶ 8 (10th Dist.); see *State v. Apanovitch*, 2018-Ohio-4744, ¶ 36 (“[A] petitioner's failure to satisfy R.C. 2953.23(A) deprives a trial court of jurisdiction to adjudicate the merits of an untimely or successive postconviction petition.”).

{¶ 8} In Houser's direct appeal, the trial transcript was filed in this court on December 3, 2024. Consequently, to be timely, Houser's post-conviction petition had to be filed by December 3, 2025. He did not, however, file his post-conviction petition until December 18, 2025. Despite these circumstances, Houser requested that the filing be deemed timely based on the “prison-mailbox rule” and his attempt to have a family member timely file the pro se petition on November 25, 2025 (which Houser acknowledges was rejected by the trial court clerk's office because it was unsigned). But Ohio does not recognize a “prison-mailbox rule,” and “a document is not considered filed in an Ohio court until it is deposited with the clerk of court.” *Calo v. Stuff*, 2024-Ohio-5167, ¶ 14. Relatedly, because Civ.R. 11 requires an unrepresented party to sign any document filed in court, a clerk has no duty to accept for filing an unsigned document. See Civ.R. 11 (“A party who is not represented by an attorney shall sign, by electronic signature or by hand, the pleading, motion, or other document”); *State ex rel. Office of the Montgomery Cty. Pub. Defender v. Siroki*, 2006-Ohio-1065, ¶ 12, quoting *State ex rel. Wanamaker v. Miller*, 164 Ohio St. 176, 177 (1955) (“‘It is the duty of the clerk of this court, in the absence of instructions from the court to the contrary, to accept for filing any paper presented to him, provided such paper is not scurrilous or obscene, is properly prepared and is accompanied by the requisite filing fee.’ ”); *Peters v. Lawson*, 2026-Ohio-891, ¶ 5 (10th Dist.) (striking objections to magistrate's decision, and proceeding “as if no objections ha[d] been filed,” because petitioner failed to comply with Civ.R. 11's signature requirement); *Mubashshir v. Sheldon*, 2010-Ohio-4808, ¶ 17 (3d Dist.) (noting that a clerk of court's rejection of an unsigned

motion “merely follow[s] proper procedure”). Therefore, Houser’s petition was untimely filed.

{¶ 9} Because Houser’s petition was untimely filed, for the trial court to have jurisdiction over the petition, he needed to demonstrate the requirements set forth in R.C. 2953.23(A). Houser failed to show (or even argue), however, that he was unavoidably prevented from discovering the facts necessary for the claim for relief, that the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in his situation, or that he was innocent based on DNA testing. The trial court thus lacked jurisdiction to consider his untimely post-conviction petition. Accordingly, we find that the trial court did not err in denying Houser’s petition, though technically the petition should have been dismissed for lack of jurisdiction. *See, e.g., State v. Pippins*, 2026-Ohio-1827, ¶ 11, fn. 4 (10th Dist.) (although it is not error for a trial court to deny an untimely petition not meeting the requirements of R.C. 2953.23(A), it is more technically proper for the trial court to dismiss such a petition for lack of jurisdiction).

{¶ 10} For these reasons, we overrule all four of Houser’s assignments of error.

IV. Disposition

{¶ 11} Having overruled all four of Houser’s assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

DORRIAN and JAMISON, JJ., concur.
