[Cite as *State v. Tunstall*, 2026-Ohio-4422.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
		CASE NO. CA2026-04-044
Appellee,	:	
		OPINION AND
vs.	:	JUDGMENT ENTRY
		11/9/2026
KAMERON TUNSTALL,	:	
Appellant.	:	
	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2018-09-1579

Michael T. Gmoser, Butler County Prosecuting Attorney, and Willa Concannon, Assistant Prosecuting Attorney, for appellee.

Arenstein & Gallagher, and William R. Gallagher and Elizabeth Conkin, for appellant.

O P I N I O N

M. POWELL, P.J.

{¶ 1} Appellant, Kameron Tunstall, appeals a decision of the Butler County Court of Common Pleas denying his petition for postconviction relief.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} In 2019, appellant was convicted by a jury of two counts of murder, two counts of felonious assault, and one count of discharge of a firearm on or near prohibited premises. He was sentenced to an aggregate prison term of 21 years to life. The charges against appellant were based upon an August 29, 2018 shooting in which appellant acted as an accomplice to fellow gang member Miquan Hubbard in carrying out a calculated retaliatory attack against a rival gang. Appellant supplied the Glock firearm and ammunition, acted as the scout and lookout, escorted Hubbard to the street where three rival gang members had congregated, and returned to the getaway car by himself. A few moments later, Hubbard shot multiple rounds into the group. A rival gang member was wounded in the attack and a 13-year-old bystander was killed. Afterward, appellant fled with Hubbard and destroyed evidence of the crime. The driver of the getaway car, Jordan Schooler, testified on behalf of the State.

{¶ 3} Appellant filed a direct appeal of his convictions and argued, inter alia, that his convictions were against the manifest weight of the evidence and were not supported by sufficient evidence because the State failed to prove he aided and abetted Hubbard in committing the crimes. We upheld appellant's convictions on November 2, 2020. *State v. Tunstall*, 2020-Ohio-5124 (12th Dist.). On March 2, 2021, the Ohio Supreme Court declined jurisdiction to review.

{¶ 4} On September 8, 2025, appellant filed a petition for postconviction relief ("PCR") under R.C. 2953.21(A)(1)(a)(i), arguing that the State had suppressed evidence material to his defense in violation of his state and federal constitutional rights to due process and a fair trial, and *Brady v. Maryland*, 373 U.S. 83 (1963), and *State v. Bethel*, 2022-Ohio-783. Specifically, appellant argued that the State had suppressed handwritten, undated, and unsigned notes made by law enforcement of statements of Schooler, the

State's key witness, reflecting that she told the police: (1) "Kameron left car by himself came back told Miquan they are still out there but the little kid is still there. Kameron didn't want to do it in front of the kid. Miquan and Kameron walk back together," and (2) "Kameron kept saying 'I told you not to do it.'" In the margin next to the first note, the officer wrote, "Was this her GJ testimony?"

{¶ 5} The police notes were not provided to the defense in discovery. One of appellant's appellate attorneys ultimately obtained the notes on September 3, 2024, pursuant to a February 2024 public-records request to the Hamilton Police Department. Appellant asserted that had his trial attorneys known of the police notes memorializing Schooler's statements, they would have argued that appellant had withdrawn from the plan to kill an opposing gang member, thereby providing him with a total defense to the charges against him, and that without the police notes, appellant was forced to argue the evidence was insufficient to establish beyond a reasonable doubt that he had been complicit in Hubbard's criminal acts. Appellant supported his PCR petition with several exhibits. They included the two police notes, the affidavit of the attorney who obtained the notes, and the affidavit of one of appellant's trial attorneys.

{¶ 6} In its response opposing the PCR petition, the State asserted that it did not know these police notes existed prior to seeing them attached to the PCR petition. The State argued that the PCR petition should be denied because it was untimely filed under R.C. 2953.21; thus, appellant was required to show he was unavoidably prevented from discovering the police notes; however, appellant failed to meet his burden because he could have made a public-records request at the completion of his trial. Alternatively, the State argued that appellant failed to establish a *Brady* claim because his statements within the police notes were not *Brady* material and he was not prejudiced by the nondisclosure.

{¶ 7} On March 5, 2026, the trial court denied appellant's PCR petition without an evidentiary hearing. Using the State's argument almost verbatim, the trial court found that appellant failed to demonstrate he was unavoidably prevented from discovering the police notes because he could have made a public-records request on April 26, 2019, when his trial concluded, and therefore, his PCR petition was untimely. The trial court neither addressed appellant's *Brady* claim nor acknowledged that the PCR petition was based solely upon a *Brady* claim.

{¶ 8} Appellant appeals the denial of his PCR petition, raising one assignment of error:

> THE TRIAL COURT'S DECISION DENYING KAMERON'S PETITION FOR POST-CONVICTION RELIEF, BECAUSE IT WAS FILED OUTSIDE THE 365-DAY PERIOD SET FORTH IN R.C. 2953.21(A)(2)(a), WAS CONTRARY TO ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES, AND THEREFORE, DENIED KAMERON HIS FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS.

II. ANALYSIS

A. The Brady Standard

{¶ 9} In *Brady*, the United States Supreme Court held that a state violates the Fourteenth Amendment to the United States Constitution when it "withholds evidence that is favorable to the defense and material to the defendant's guilt or punishment." *Smith v. Cain*, 565 U.S. 73, 75 (2012) (summarizing *Brady*'s holding). ""There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.'" *Bethel*, 2022-Ohio-783, at ¶ 19, quoting *Strickler v. Greene*, 527 U.S. 263, 281-282 (1999). "[F]avorable evidence is material, and constitutional error results from its

suppression by the government, 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Kyles v. Whitley*, 514 U.S. 419, 433 (1995). A different result is reasonably probable "when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" *Id.* at 434.

B. Ohio's Postconviction-Relief Scheme

{¶ 10} To prevail on a PCR petition, the petitioner must establish a violation of his constitutional rights that renders the judgment of conviction void or voidable. R.C. 2953.21. An evidentiary hearing is not automatically guaranteed each time a defendant files a PCR petition. *State v. Suarez*, 2015-Ohio-64, ¶ 10 (12th Dist.). "A trial court properly denies a defendant's petition for postconviction relief without holding an evidentiary hearing where the petition, the supporting affidavits, the documentary evidence, the files, and the records do not demonstrate that petitioner set forth sufficient operative facts to establish substantive grounds for relief." *State v. Calhoun*, 1999-Ohio-102, paragraph two of the syllabus.

{¶ 11} A PCR petition must be filed within 365 days after the trial transcript is filed in the court of appeals (in the case of a direct appeal), or, if no appeal is taken, no later than 365 days after the expiration of the time for filing the direct appeal. R.C. 2953.21(A)(2). The trial transcript was filed on June 6, 2019, in appellant's direct appeal. Appellant's PCR petition was filed six years later and was therefore untimely under R.C. 2953.21(A).

{¶ 12} Pursuant to R.C. 2953.23(A)(1), a court may entertain an untimely PCR petition if the petitioner demonstrates two prerequisites. As pertinent here, and given appellant's *Brady* claim, "for the trial court to have subject-matter jurisdiction to consider the petition, [appellant] had to show (1) that he was 'unavoidably prevented from

discovery of the facts' upon which his claim relies and (2) by clear and convincing evidence, that no reasonable fact-finder would have found him guilty . . . but for the constitutional error at trial." *Bethel*, 2022-Ohio-783, at ¶ 20. "A defendant seeking to assert a *Brady* claim . . . is not required to show that he could not have discovered suppressed evidence by exercising reasonable diligence." *Id.* at ¶ 25. Rather, a defendant seeking to assert a *Brady* claim in an untimely PCR petition "satisfies the 'unavoidably prevented' requirement contained in R.C. 2953.23(A)(1)(a) by establishing that the prosecution suppressed the evidence on which the defendant relies." *Id.* The Ohio Supreme Court subsequently reaffirmed that a petitioner who files an untimely PCR petition may show he was unavoidably prevented from discovering the evidence upon which the petition relies "either by establishing a violation under *Brady*, . . . or by demonstrating that he was previously unaware of the evidence on which the petition relies and could not have discovered it by exercising reasonable diligence." *State v. Johnson*, 2024-Ohio-134, ¶ 18. The untimely PCR petition in *Johnson* did not involve a *Brady* claim.

C. The Parties' Respective Arguments

{¶ 13} Appellant argues that the trial court erred in denying his PCR petition because the court failed to address the sole basis of the petition—that a *Brady* violation had materially prejudiced his defense—and instead denied the petition as untimely solely because the police notes could have been obtained as soon as April 26, 2019. Appellant asserts he had no obligation to ferret-out the police notes and cites *Banks v. Dretke*, 540 U.S. 668, 695 (2004), in support ("Our decisions lend no support to the notion that defendants must scavenge for hints of undisclosed *Brady* material when the prosecution represents that all such material has been disclosed). Citing *Bethel*, appellant further asserts that the "'reasonable diligence' burden is present only where the petitioner does not establish a *Brady* violation occurred," and therefore, the trial court applied the

incorrect standard of review in finding that the PCR petition was untimely filed.

{¶ 14} The State concedes that appellant did not receive the police notes before trial and reiterates that the trial prosecutors were neither in possession of nor aware that the handwritten police notes existed prior to appellant's filing of his PCR petition. The State asserts that the videotaped police interview of Schooler was provided to the defense in discovery and that the police notes "appear to be from an interview of [Schooler] subsequent to the videotaped police interview." In response to appellant's arguments above, the State argues that the PCR petition was properly denied because (1) appellant failed to establish a *Brady* violation under *Johnson* because the police notes, containing appellant's own statements, cannot serve as *Brady* material, (2) alternatively, appellant failed to demonstrate he was "'unavoidably prevented' from discovering the evidence he relies upon in his petition" because he was not "unavoidably prevented" from discovering his own statements and he could have made a public-records request when his trial concluded, and (3) even if this court concludes that the State suppressed the evidence, appellant "has failed to demonstrate *Brady* prejudice."

{¶ 15} Before proceeding further, we must highlight an important fallacy in the State's response to appellant's argument. The State asserts that the facts upon which appellant relies in presenting his claim for relief are restricted to his statements as reflected in the police notes. However, the notes also reveal that Schooler is a witness who may corroborate that appellant made the statements. Thus, the analysis of whether there is a *Brady* violation should include discovery of Schooler as a corroborating witness.

D. The Trial Court's Denial of Appellant's PCR Petition

{¶ 16} The parties' arguments, and particularly that of the State, are effectively asking this court to rule upon the *Brady* claim. However, as indicated above, the trial court never addressed the *Brady* claim even though appellant's PCR petition was based solely

upon that claim. Instead, the trial court found that appellant "had failed to demonstrate that he was unavoidably prevented from discovering the facts he relies upon for his petition" because he could have made a public-records request as soon as his trial concluded, and therefore, his PCR petition was untimely. In doing so, the trial court ignored the effect of a *Brady* violation in an unavoidable-prevention analysis as recognized in *Bethel* and *Johnson*.

{¶ 17} The Ohio postconviction-relief statutory scheme "requires the trial court to consider the allegations of the petition for postconviction relief and the particular facts upon which the petitioner bases his claim[.]" *State v. Lester*, 41 Ohio St.2d 51 (1975), paragraph two of the syllabus. "Further, the general purpose of R.C. 2953.21 is to provide judicial review of the allegations raised in a prisoner's petition, in order to provide a remedy for violation of constitutional rights. This purpose requires that the trial court make a finding as to the substantive basis of each claim for relief contained in the petition." *Id.* at 56. Stated differently, a trial court must address all determinative issues.

{¶ 18} Because the trial court failed to address the *Brady* claim, a determinative and sole issue in appellant's PCR petition, and provide a basis for a resolution of that issue, we cannot effectively review its judgment. *State v. Issa*, 2000 Ohio App. LEXIS 4488, *5 (1st Dist. Sept. 29, 2000). To avoid piecemeal litigation, we decline to address the merits of the trial court's decision. *Lester* at 56; *Issa* at *5; *State v. Wiles*, 126 Ohio App.3d 71 (11th Dist. 1998); *State v. Wilson*, 110 Ohio App.3d 178 (2d Dist. 1996). When the trial court enters findings and conclusions sufficient to dispose of the *Brady* claim, we will address the merits all at once. *See Wiles* at 81.

III. CONCLUSION

{¶ 19} We therefore reverse the trial court's denial of appellant's PCR petition and remand this cause for the trial court to address the *Brady* claim and make findings of fact

and conclusions of law. The *Brady* issue is for the trial court to determine on remand and not for this court to address for the first time on appeal. Appellant's assignment of error is sustained.

{¶ 20} Judgment reversed and remanded for further proceedings in accordance with this opinion.

SIEBERT, J., and DONOVAN, V.J., concur.

Donovan, J., retired, of the Second Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 6(C), Article IV of the Ohio Constitution.

JUDGMENT ENTRY

The assignment of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, reversed and remanded for further proceedings consistent with the above Opinion.

It is further ordered that a mandate be sent to the Butler County Court of Common Pleas for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

/s/ Mike Powell, Presiding Judge

/s/ Melena S. Siebert, Judge

/s/ Mary E. Donovan, Visiting Judge