

[Cite as *State v. Sisson*, 2011-Ohio-131.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23807
v.	:	T.C. NO. 2006CR2878
PAUL C. SISSON	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

**OPINION**

Rendered on the 14<sup>th</sup> day of January, 2011.

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PAUL C. SISSON, #547964, 680 S.R. 555 NE, Corning, Ohio 43730  
Defendant-Appellant

DONOVAN, J.

{¶ 1} This matter is before the Court on the pro se Notice of Appeal of Paul C. Sisson, filed December 31, 2009. On September 5, 2006, Sisson was indicted on one count of possession of crack cocaine, in violation of R.C. 2925.11(A), a felony of the first degree. After his motion to suppress was overruled, and following a jury trial, Sisson was found

guilty, and the trial court sentenced him to a three-year prison term. We affirmed the trial court's judgment on July 11, 2008, determining that Sisson's conviction was not against the manifest weight of the evidence. *State v. Sisson*, Montgomery App. No. 22173, 2008-Ohio-3490. On October 7, 2008, we denied Sisson's application to reopen his direct appeal, finding that he failed to demonstrate that counsel in his direct appeal provided ineffective assistance.

{¶ 2} On September 17, 2009, Sisson filed in the trial court a pro se document styled, "Notice of Motion to Reconsider There (sic) Decision on My Conviction," and on November 17, 2009, he filed a motion to appoint counsel. Sisson also filed a 37 page handwritten memorandum in support of his motions. On December 18, 2009, the trial court determined that Sisson's September 17<sup>th</sup> filing "could more properly be characterized as a Motion for New Trial and/or a Petition for Post-Conviction Relief," and it overruled the motions as untimely and further found that "all of the allegations made by Mr. Sisson are contained within the record and, as such, have been rendered *res judicata* by his appeal." Given its disposition of Sisson's September 17<sup>th</sup> filing, the trial court overruled Sisson's request for counsel.

{¶ 3} On December 31, 2009, the same day that he filed his notice of appeal, Sisson filed a pro se "Motion to Review Defendant's Conviction from Montgomery County Common Pleas Court and Reverse its Conviction on Defendant," and on January 4, 2010, he filed a "Motion to Add to My Appeal" in this court. In overruling those motions, we noted that "Sisson requests permission to reopen his case and review his conviction and sentence in order to present evidence he alleges was not previously brought forth by trial or appellate

counsel. Sisson further makes arguments associated with his underlying case regarding lack of a fair trial with an impartial jury; ineffective assistance of counsel and violations of his constitutional rights by the prosecutor, a park ranger, counsel and the judge.” We further noted that, “[p]rocedurally, Sisson has filed a timely notice of appeal from the December 18, 2009 judgment entry of the Montgomery County Common Pleas Court in case no. 2006-CR-2878 overruling Sisson’s ‘Notice of Motion to Reconsider There [sic] Decison on My Convictions.’” We determined that the “arguments Sisson may raise on appeal are limited to issues arising from the December 18, 2009 order,” and that any arguments regarding his 2006 conviction and sentence should have been made on direct appeal.

{¶ 4} We agree with the trial court that Sisson’s motions for a new trial and/or post-conviction relief were untimely. Crim.R. 33(B) provides, “Application for a new trial shall be made by motion which, except for the cause of newly discovered evidence, shall be filed within fourteen days after the verdict was rendered, \* \* \* unless it is made to appear by clear and convincing proof that the the defendant was unavoidably prevented from filing his motion for a new trial, in which case the motion shall be filed within seven days from the order of the court finding that the defendant was unavoidably prevented from filing such motion within the time provided herein.” The record reveals that the jury rendered its verdict on April 11, 2007, and as the trial court noted, nothing in the record suggests that Sisson was “unavoidably prevented from filing his motion for a new trial.”

{¶ 5} R.C. 2953.21(A)(2) provides that a petition for post-conviction relief must be filed no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction. R.C. 2953.23(A)

provides that a court may not entertain a petition filed after the expiration of the period prescribed in division (A) of R.C. 2953.21 unless division (A)(1) or (2) applies:

{¶ 6} “(1) Both of the following apply:

{¶ 7} “(a) The petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claims for relief.

{¶ 8} “(b) 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.

{¶ 9} “(2) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable fact-finder would have found the petitioner guilty of the offense of which the petitioner was convicted.”

{¶ 10} Regarding Sisson’s Brief, we initially note that it fails to comply with App.R. 16 in that it does not delineate specific assignments of error. Sisson’s brief instead sets forth five enumerated paragraphs discussed below.

{¶ 11} Paragraph 1. Sisson asserts herein that his appellate counsel lacked sufficient time to prepare his direct appeal because we granted a final extension to file Sisson’s brief before appellate counsel received a copy of the transcript of the proceedings. We agree with the State that this issue is not properly the subject of an appeal from the trial court’s December 18, 2009 Decision. Further, the record reveals that the transcript in Sisson’s direct appeal was filed September 7, 2007, and on September 10<sup>th</sup>, defense counsel moved the court for an extension of time to file Sisson’s brief. Counsel was given until

November 9, 2007 to file the brief, and it was filed on time.

{¶ 12} Paragraph 2. Sisson asserts that his trial transcript and exhibits portray the errors he alleges in “my Motion to Vacate my Sentence.” The Ohio Supreme Court, in *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, syllabus at ¶ 9, determined, “Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment of conviction, or on an appeal from that judgment.” The trial court correctly determined that Sisson’s claimed errors, which he asserts are reflected in the record below, are barred by the doctrine of res judicata.

{¶ 13} Paragraph 3. Here Sisson asserts that he did not move the court for a new trial but to vacate or reverse his conviction and sentence. In the context of a petition for post-conviction relief, the trial court lacks jurisdiction to consider an untimely petition. *State v. Beavers*, Montgomery App. No. 20572, 2005-Ohio-1205, ¶ 19 (“ \* \* \* the provisions of O.R.C. § 2953.23(A) are jurisdictional in nature, and \* \* \* absent a petitioner’s showing that the requisites contained therein have been met, a trial court is without jurisdiction to entertain an untimely petition for post-conviction relief. Unless it appears from the record that [Petitioner] was unavoidably prevented from discovering facts upon which he relied in his petition, or that the United States Supreme Court has recognized a new federal or state right that applies retroactively to [Petitioner], and that but for constitutional error at trial no reasonable factfinder would have found [Petitioner] guilty, we are bound to conclude the

trial court was without jurisdiction to consider his petition for post-conviction relief.”)

{¶ 14} Sisson further asserts, “The Common Pleas Court Judge says all my claims and errors are in my trial transcript. That’s why I am in Appeal Court for.” (sic). The trial court’s determination that “all of the allegations made by Mr. Sisson are contained within the record” is not a judgment upon the merits of his claims as Sisson appears to mistakenly conclude.

{¶ 15} 4. Sisson here refers to our denial of his App.R. 26(B) application to reopen his direct appeal, which is not the proper subject of an appeal from the trial court’s decision overruling his motion for a new trial and/or petition for post-conviction relief.

{¶ 16} 5. In his final paragraph Sisson asserts several allegations of error, to include “no probable cause, all state witnesses committed perjury, and conspired to deprive me of my constitutional rights \* \* \* to a fair trial, rangers falsified there [sic] reports, ranger \* \* \* profiled me because of my long hair, \* \* \* prosecutor misconduct and misleading the jury with untruthful statements \* \* \* The trial judge, prosecutor, rangers violated my State and Federal rights by conspiring to deprive me of a fair trial under color of law \* \* \* ineffective assistance of counsel at trial and appeal, when a claim is made that a conviction is against the manifest weight of the evidence this appeal court must review all court records and trial transcript \* \* \* unlawful search and seizure \* \* \*.” These arguments are not the proper subject of appeal from the trial court’s determination that Sisson’s motion for a new trial and/or for post-conviction relief was untimely and that his claims were barred by the doctrine of res judicata.

{¶ 17} There being no merit to Sisson’s appeal, the judgment of the trial court is

affirmed.

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GRADY, J. and FROELICH, J., concur.

Copies mailed to:

R. Lynn Nothstine

Paul C. Sisson

Hon. Mary Katherine Huffman