

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO

Appellee

v.

DEE CARTER

Appellant

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C.A. No. 2025-CA-90

Trial Court Case No. 01-CR-0214

(Criminal Appeal from Common Pleas
Court)

**FINAL JUDGMENT ENTRY &
OPINION**

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Pursuant to the opinion of this court rendered on September 25, 2026, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



MARY K. HUFFMAN, JUDGE

LEWIS, P.J., and HANSEMAN, J., concur.

OPINION
CLARK C.A. No. 2025-CA-90

DEE CARTER, Appellant, Pro Se
JOHN M. LINTZ, Attorney for Appellee

HUFFMAN, J.

{¶ 1} Dee Carter appeals from the judgment of the Clark County Common Pleas Court overruling his successive petition for postconviction relief. For the reasons stated below, the judgment of the trial court is affirmed.

I. Facts and Procedural History

{¶ 2} Carter was found guilty by a jury of rape and was sentenced on August 15, 2001, to a mandatory term of imprisonment of five years. We affirmed Carter's conviction on direct appeal. *State v. Carter*, 2002-Ohio-5125 (2d Dist.). Carter filed his first petition for postconviction relief in December 2001, which was overruled by the trial court in October 2002. No appeal was taken by Carter. On December 26, 2002, Carter filed a second petition for postconviction relief. After the trial court overruled Carter's successive petition on January 31, 2003, we affirmed the court's decision on September 12, 2003. *State v. Carter*, 2003-Ohio-4838 (2d Dist.).

{¶ 3} On January 25, 2025, Carter filed a motion that the trial court construed as a petition for postconviction relief. On November 13, 2025, the trial court denied the petition, finding that it was untimely filed, that *res judicata* barred Carter's claims, and that the evidence that he argued should have been admitted at trial was barred by the rape shield statute. After filing a notice of appeal from the decision denying his postconviction petition, Carter filed a motion with the trial court on February 2, 2026, seeking to correct the record

and add affidavits that appear to be interpretations by the prosecutor and defense counsel of the evidence at trial.¹ This motion remains pending before the trial court.

II. Assignment of Error and Analysis

{¶ 4} Carter’s brief does not specifically set forth any assignments of error. However, we construe the brief to raise the trial court’s failure to approve an App.R. 9(C) statement of the evidence.²

{¶ 5} “A pro se appellant is held to the same obligations and standards set forth in the appellate rules that apply to all litigants.” *State v. Olman*, 2025-Ohio-437, ¶ 9 (7th Dist.), quoting *Bryan v. Johnston*, 2012-Ohio-2703, ¶ 7 (7th Dist.). App.R. 16(A)(7) places the burden on the appellant to demonstrate error “with citations to the authorities, statutes, and parts of the record on which appellant relies.” “The burden of affirmatively demonstrating error on appeal rests solely with the appealing party. . . . It is not the duty of this court to search the record for evidence to support an appellant’s argument as to alleged error.” *Martcheva v. Dayton Bd. of Edn.*, 2021-Ohio-3524, ¶ 23 (2d Dist.), quoting *Shumate v. City of Gahanna*, 2003-Ohio-1329, ¶ 6 (10th Dist.). App.R. 12(A)(2) permits an appellate court to disregard an assignment of error when a party “fails to identify in the record the error on

1. In its brief the State erroneously asserts that Carter failed to file a motion pursuant to App.R. 9(C) in the trial court.

2. App.R. 9(C) states: “If no recording of the proceedings was made, if a transcript is unavailable, or if a recording was made but is no longer available for transcription, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant’s recollection.” Pursuant to App.R. 10, the App.R. 9(C) statement must be approved by the trial court and filed with the clerk of the trial court as part of the record transmitted to the court of appeals. Here, Carter’s conviction was affirmed on appeal, and he has completed his sentence. To the extent that he may have sought to supplement his appeal of the denial of his successive petition for postconviction relief, the denial of the petition required no factual development of the trial record but was jurisdictional pursuant to R.C. 2953.23(A), and res judicata barred relitigation of issues that were or could have been raised on direct appeal.

which the assignment of error is based or fails to argue the assignment separately in the brief.” Despite deficiencies in a brief related to arguments associated with any assigned error, the appellate court may, in its discretion, choose to construe the appellant’s arguments in the assignments of error, rather than dismiss the appeal. See *McManus v. Stump*, 2024-Ohio-2093, ¶ 6 (2d Dist.), citing *Dayton City School Dist. Bd. of Edn. v. Dayton Edn. Assn.*, 2018-Ohio- 4350, ¶ 43 (2d Dist.), and *Ransom v. Aldi, Inc.*, 2017-Ohio-6993, ¶ 23 (2d Dist.). An appellate court cannot consider matters that occurred after the filing of a notice of appeal. *State v. Quinn*, 2024-Ohio-2194, ¶ 27 (2d Dist.), citing *Sullivan v. Curry*, 2010-Ohio-5041, ¶ 54 (2d Dist.).

{¶ 6} Carter’s brief does not present any argument or discussion related to the judgment of the trial court denying his postconviction petition, the judgment from which he appealed. Instead, his argument relates to the February 2, 2026 App.R. 9(C) motion he filed in the trial court after the issuance of the judgment entry denying his successive petition for postconviction relief. We cannot consider any arguments related to his motion to correct the record for two reasons. First, the trial court did not issue a decision or judgment related to that motion and therefore, there is no action by the trial court for us to review. Second, his argument related to his App.R. 9(C) motion was raised after he filed his notice of appeal from the trial court’s denial of his successive petition for postconviction relief.

{¶ 7} Still further, despite our diligent efforts to decipher a cognizable argument in his brief related to the judgment from which he appealed, we have found none. It is not our role to create an argument for Carter. We decline to do so, particularly since any argument in Carter’s brief relates not to the trial court’s denial of his third successive petition for postconviction relief, but instead to a claim that the trial court failed to consider an (inappropriate) App.R. 9 request, a matter that is not properly before us.

III. Conclusion

{¶ 8} Because Carter failed to present any assignment of error, argument, evidence, or legal authority in support of his brief associated with the judgment from which he appealed, the judgment of the Clark County Common Pleas Court is affirmed.

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LEWIS, P.J., and HANSEMAN, J., concur.