

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

STATE OF OHIO

Appellee

v.

DEJUANE TERRELL YARBROUGH

Appellant

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C.A. No. 30768

Trial Court Case No. 2024 CR 02410

(Criminal Appeal from Common Pleas
Court)

**FINAL JUDGMENT ENTRY &
OPINION**

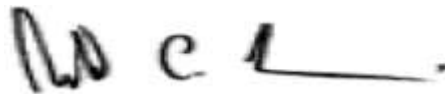
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Pursuant to the opinion of this court rendered on October 23, 2026, the judgment of the trial court is affirmed.

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,



RONALD C. LEWIS, PRESIDING JUDGE

EPLEY, J., and HANSEMAN, J., concur.

OPINION
MONTGOMERY C.A. No. 30768

DEJUANE TERRELL YARBROUGH, Appellant, Pro Se
MICHAEL P. ALLEN, Attorney for Appellee

LEWIS, P.J.

{¶ 1} Appellant Dejuane Terrell Yarbrough appeals from the Montgomery County Common Pleas Court’s judgment denying his petition for postconviction relief. For the following reasons, the judgment of the trial court is affirmed.

I. Facts and Course of Proceedings

{¶ 2} On August 30, 2024, Yarbrough was indicted by a Montgomery County grand jury on one count of aggravated possession of drugs (100 times bulk or more) in violation of R.C. 2925.11(A), a first-degree felony; one count of possession of fentanyl-related compound (equal to or greater than 100 grams) in violation of R.C. 2925.11(A), a first-degree felony; one count of aggravated possession of drugs (5 times bulk but less than 50 times bulk) in violation of R.C. 2925.11(A), a second-degree felony; and one count of possession of cocaine (10 grams but less than 20 grams) in violation of R.C. 2925.11(A), a third-degree felony. The charges involved evidence seized when a search warrant was executed at Yarbrough’s residence on August 14, 2024.

{¶ 3} On September 19, 2024, the State filed a certification of nondisclosure pursuant to Crim.R. 16(D). The filing identified the search warrant at issue in the case as having been completed and obtained “on August 21, 2024,” and the warrant was sealed by Judge Gerald Parker of the Montgomery County Common Pleas Court the same day. The State advised that a redacted copy of the search warrant would be provided to defense counsel and that the document was marked “counsel only” in accordance with Crim.R. 16(C).

On September 25, 2024, the State filed a discovery request signed by an associate defense counsel for Yarbrough reflecting the disclosure of the “August 21, 2024 Search Warrant and Affidavit, signed by Judge Gerald Parker (under seal).”

{¶ 4} On October 28, 2024, Yarbrough filed a motion to suppress all evidence seized during the search of his residence. According to the motion, the search warrant for Yarbrough’s home was obtained due to an investigation involving confidential informants and multiple undercover drug buys. Yarbrough argued that probable cause did not exist for the issuance of the warrant.

{¶ 5} On March 5, 2025, Yarbrough entered a guilty plea to a lesser included offense of one count of aggravated possession of drugs (50 times bulk but less than 100 times bulk) in violation of R.C. 2925.11(A), a first-degree felony. Pursuant to a plea agreement, the remaining counts were dismissed and the parties agreed to a mandatory minimum seven-year prison term. Yarbrough also withdrew his motion to suppress.

{¶ 6} On May 28, 2025, the trial court held a sentencing hearing at which Yarbrough was sentenced to the agreed mandatory definite minimum prison term of 7 years to an indefinite maximum prison term of 10.5 years. The court memorialized the sentence in a May 30, 2025 written judgment entry. Yarbrough appealed.

{¶ 7} Yarbrough raised a single assignment of error on appeal challenging the trial court’s Reagan Tokes sentencing notifications. This court sustained Yarbrough’s assignment of error, remanded the cause for the trial court to properly advise Yarbrough regarding the Reagan Tokes notifications, and affirmed the judgment in all other respects. *State v. Yarbrough*, 2025-Ohio-5437, ¶ 13 (2d Dist.).

{¶ 8} While Yarbrough’s direct appeal was pending, he filed a timely petition for postconviction relief. Yarbrough raised four claims in his petition: (1) ineffective assistance

of counsel; (2) misrepresentation and concealment of material evidence of the invalid search warrant by the State; (3) fraud on the court by the prosecutor and defense counsel; and (4) newly discovered evidence of the absence of a valid search warrant. The crux of Yarbrough's petition was that the search warrant for his home was not signed by a judge or filed with the trial court prior to the execution of the search warrant, and therefore, it was invalid. Because the search warrant was invalid, the evidence could not have been used against him, and Yarbrough would not have entered a guilty plea had he known that the search warrant was invalid. According to Yarbrough, he did not learn until after his conviction that the search warrant was invalid. He claimed that his trial counsel and the prosecutor concealed this information from him to obtain a guilty plea. Yarbrough acknowledged that he was aware his home was searched on August 14, 2024, that a copy of the search warrant was left at his home that same day, and that his attorney read him the contents of the search warrant though he was not permitted to see it. Yarbrough further acknowledged that there were filings in the record regarding the search warrant, but the filings referenced the warrant having been signed on August 21, 2024, which was after the search warrant was executed.

{¶ 9} Attached to his petition, Yarbrough submitted a copy of the summary of docket and various documents filed in his case, a redacted police report, a redacted copy of the search warrant left at his home, and several emails. Yarbrough filed his own affidavit in support of his petition and affidavits of his mother, Bonita Barr, and his fiancée, Krystal Draper. Yarbrough also filed a motion asking to appoint counsel to assist with his petition.

{¶ 10} According to Barr's affidavit, she had contacted several agencies requesting documentation showing the date and time the search warrant was signed and executed.

According to Barr, she was unable to obtain any documentation of the signed and executed search warrant.

{¶ 11} Draper's affidavit stated that she was living with Yarbrough on August 14, 2024, when police made entry to their home and announced that they had a search warrant. Draper confirmed that after the police left, a copy of the search warrant was left on the dining room table.

{¶ 12} Yarbrough's affidavit laid out a timeline of events that identified August 14, 2024, as the date when his home was searched and he was arrested. Upon his release from jail, he returned home and reviewed the search warrant left at his home, which "had a signature line date of August 13, 2024." Yarbrough's affidavit discussed receiving discovery, meeting with his attorney, and pleading guilty. Yarbrough recalled that his attorney read portions of "the detective's affidavit" to him but that he was not provided a copy because it was "for attorneys eyes only." Yarbrough also stated that he later requested a copy of the detective's affidavit from his trial counsel and was provided only copies of the discovery he had already received. Yarbrough concluded that had he known the search warrant was dated after the day it was executed, he would not have pleaded guilty.

{¶ 13} The State filed a response to Yarbrough's petition, denying any allegations of misconduct. The State explained that the warrant was signed by Judge Parker on August 13, 2024, prior to the search of Yarbrough's home, and the warrant was sealed that same day. The warrant return was not filed until August 21, 2024, and the filings in the record that referenced the warrant erroneously identified August 21, 2024 as the return date rather than the correct August 13, 2024 date. The State's response attached a certified copy of the search warrant that was filed in the Montgomery County Common Pleas Court, along with copies of the entry sealing the warrant and the warrant return. The documents reflect

that the warrant was signed by Montgomery County Common Pleas Court Judge Parker on August 13, 2024, at 9:38 a.m.; the warrant was sealed via entry signed by Judge Parker on August 13, 2024, at 9:39 a.m.; and it was executed on August 14, 2024. The warrant return was filed on August 21, 2024.

{¶ 14} On January 9, 2026, the trial court overruled Yarbrough's petition and motion to appoint counsel. The trial court found that Yarbrough's claims that evidence was concealed and that the State and his trial counsel committed a fraud on the court were precluded by res judicata. The trial court also found that all of Yarbrough's claims lacked merit.

{¶ 15} Yarbrough timely appealed.

II. The Trial Court Did Not Abuse Its Discretion When it Denied Yarbrough's Petition for Postconviction Relief Without a Hearing.

{¶ 16} In his first assignment of error, Yarbrough states:

THE TRIAL COURT ERRED UNDER R.C. 2953.21 BY RESOLVING DISPUTED EXTRA-RECORD FACTUAL ISSUES AT THE PLEADING STAGE AND DENYING AN [sic] MR. YARBROUGH AN EVIDENTIARY HEARING.

{¶ 17} "We review a decision to grant or deny a petition for postconviction relief, including the decision whether to afford the petitioner a hearing, under an abuse-of-discretion standard." *State v. Hatton*, 2022-Ohio-3991, ¶ 38, citing *State v. Gondor*, 2006-Ohio-6679, ¶ 51-52, 58. An abuse of discretion has been defined as conduct that is unreasonable, arbitrary, or unconscionable. *State v. Beasley*, 2018-Ohio-16, ¶ 12, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). "[W]hen applying this standard, an

appellate court is not free to substitute its judgment for that of the trial judge.” *Berk v. Matthews*, 53 Ohio St.3d 161, 169 (1990).

{¶ 18} Postconviction relief is governed by R.C. 2953.21, which provides that any person who has been convicted of a criminal offense and who claims that there was such a denial of the person’s rights as to render the judgment void or voidable may file a petition in the court that imposed sentence. R.C. 2953.21(A)(1)(a)(i). “A postconviction proceeding is not an appeal of a criminal conviction, but, rather, a collateral civil attack on the judgment.” *State v. Steffen*, 1994-Ohio-111, ¶ 60. Along with the petition, the petitioner may file a supporting affidavit and other documentary evidence in support of the claim for relief. R.C. 2953.21(A)(1)(b).

{¶ 19} R.C. 2953.21 does not mandate a hearing for every postconviction relief petition filed, and a hearing is not automatically required. *State v. Jackson*, 64 Ohio St.2d 107, 110 (1980). A judge may dismiss a petition for postconviction relief without first 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. “In order to grant a hearing on a timely postconviction petition, the trial court must ‘determine whether there are substantive grounds for relief.’” *State v. Bunch*, 2022-Ohio-4723, ¶ 23, quoting R.C. 2953.21(D). “If the petition ‘is sufficient on its face to raise an issue that the petitioner’s conviction is void or voidable on constitutional grounds, and the claim is one which depends upon factual allegations that cannot be determined by examination of the files and records of the case, the petition states a substantive ground for relief.’” *Id.*, quoting *State v. Milanovich*, 42 Ohio St.2d 46 (1975), paragraph one of the syllabus.

{¶ 20} “In determining whether the petition states a substantive ground for relief, the trial court must consider the entirety of the record from the trial proceedings as well as any evidence filed by the parties in postconviction proceedings.” *Id.* at ¶ 24, citing R.C. 2953.21(D). “If the record on its face demonstrates that the petitioner is not entitled to relief, then the trial court must dismiss the petition.” *Id.*, citing R.C. 2953.21(D) and (E). “If the record does not on its face disprove the petitioner’s claim, then the court is required to ‘proceed to a prompt hearing on the issues.’” *Id.*, quoting R.C. 2953.21(F).

{¶ 21} Yarbrough raised the following four claims in his petition: (1) ineffective assistance of counsel for failing to challenge the invalid search warrant; (2) misrepresentation and concealment of material evidence of the invalid search warrant by the State; (3) fraud on the court by the prosecutor and defense counsel by concealing the invalid search warrant; and (4) newly discovered evidence of the absence of a valid search warrant. According to Yarbrough, following his conviction, he was unable to locate a signed and filed copy of the search warrant and affidavit. He posits that the State failed to disclose there was an invalid search warrant, and his attorney either did not realize the search warrant was invalid or worked with the State to secure a guilty plea despite the invalidity of the search warrant. In short, the underlying basis of all Yarbrough’s claims in his petition is that the search warrant was not signed by a judge prior to its execution.

{¶ 22} In the State’s response to Yarbrough’s petition, the State admitted that its September 19 and 25, 2024 filings mistakenly referred to the August 13, 2024 warrant as having been filed on August 21, 2024. However, the State contended that the search warrant was valid because it was signed and sealed by Judge Parker on August 13, 2024, one day prior to the execution of the search warrant. In support of the response, the State submitted a certified copy of the filed search warrant, the entry sealing the search warrant,

and the search warrant return. The search warrant was signed by Montgomery County Common Pleas Court Judge Parker on August 13, 2024, at 9:38 a.m., sealed via entry signed by Judge Parker on August 13, 2024, at 9:39 a.m., and executed on August 14, 2024. The warrant return was filed on August 21, 2024, at 10:18 a.m.

{¶ 23} The trial court found that res judicata precluded Yarbrough's claims that the State had misrepresented or concealed evidence and that defense counsel and the State had committed a fraud on the court. The court also found that all of Yarbrough's claims failed on the merits.

{¶ 24} We need not consider whether res judicata applied to any of Yarbrough's claims because we agree with the trial court that all of Yarbrough's claims lacked merit and did not demonstrate substantive grounds for relief to warrant a hearing. Therefore, the trial court did not abuse its discretion in denying Yarbrough's petition without a hearing. *See State v. Kyles*, 2024-Ohio-998, ¶ 25-27 (12th Dist.) (even if a trial court errs in applying the doctrine of res judicata to a petition for postconviction relief, any error is harmless if the evidence outside the record is not sufficient to entitle a petitioner to a hearing).

{¶ 25} Evidence seized pursuant to a search warrant that is not signed by a judge prior to the search is generally subject to suppression. *State v. Williams*, 57 Ohio St.3d 24 (1991). The evidence in this case, however, supports the trial court's finding that the search warrant was signed by Montgomery County Common Pleas Court Judge Parker on August 13, 2024, at 9:38 a.m., sealed via entry signed by Judge Parker on August 13, 2024, at 9:39 a.m., and executed on August 14, 2024. Thus, the search warrant was not invalid as Yarbrough maintains. The warrant return was not filed until August 21, 2024, but this had no effect on the validity of the warrant. In fact, R.C. 2933.24 and 2933.241 contemplate that the issuance, service, and execution of a search warrant must occur prior to the filing of

the return and inventory. Because the search warrant was signed before its execution, Yarbrough's counsel was not ineffective, the State did not conceal any material evidence, and there was no fraud committed on the court. Moreover, evidence of a valid search warrant refutes Yarbrough's alleged "new evidence" that he was unable to locate a copy of the signed search warrant. Thus, Yarbrough failed to demonstrate substantive grounds for relief.

{¶ 26} Yarbrough objects to the trial court's consideration of the State's evidence submitted in opposition to his petition for postconviction relief rather than relying solely on his submissions. When considering whether a petition has stated substantive grounds for relief to warrant a hearing, "the trial court must consider the entirety of the record from the trial proceedings *as well as any evidence filed by the parties in postconviction proceedings.*" (Emphasis added.) *Bunch*, 2022-Ohio-4723, at ¶ 24, citing R.C. 2953.21(D). Moreover, the evidence Yarbrough submitted in support of his petition did not substantiate that there was not a valid search warrant, only that Yarbrough was unable to obtain a copy of the filed search warrant. Notably, Yarbrough's Exhibit E to his petition is a redacted copy of the search warrant allegedly left at Yarbrough's home on August 14, 2024, which shows that Judge Parker signed the search warrant on August 13, 2024, at 9:38 a.m., one day prior to its execution. The police report Yarbrough submitted as Exhibit D also stated that Judge Parker signed the search warrant on August 13, 2024, and the warrant was executed the following day. Thus, Yarbrough's own evidence suggests that the warrant was signed prior to its execution and was valid.

{¶ 27} When considering all the evidence, including the State's submissions, Yarbrough's petition did not demonstrate substantive grounds for relief. Therefore, the trial

court did not abuse its discretion in denying Yarbrough's petition for postconviction relief without a hearing.

{¶ 28} Yarbrough's first assignment of error is overruled.

III. R.C. 2953.21(A)(1)(b) Does Not Create a Separate Standard to Address Newly Discovered Evidence.

{¶ 29} Yarbrough's second assignment of error states:

THE TRIAL COURT ERRED BY FAILING TO ADJUDICATE MR. YARBROUGH'S NEWLY DISCOVERED EVIDENCE CLAIM UNDER R.C. 2953.21(A)(1)(B).

{¶ 30} In his second assignment of error, Yarbrough argues that his petition raised a claim of newly discovered evidence under R.C. 2953.21(A)(1)(b), and the trial court was required to "determine whether the evidence is newly discovered, whether it could have been raised previously, and whether it demonstrates a constitutional violation warranting relief." Appellant's Brief p. 7. He cites *State v. Bethel*, 2022-Ohio-783, in support of his position.

{¶ 31} R.C. 2953.21(A)(1)(b) states: "A petitioner under division (A)(1)(a) of this section may file a supporting affidavit and other documentary evidence in support of the claim for relief." Nothing in R.C. 2953.21 addresses a particular standard for addressing newly discovered evidence. Furthermore, Yarbrough's reliance on *Bethel* is misplaced. *Bethel* involved a motion for leave to file a motion for a new trial under Crim.R. 33 and a successive and untimely filed postconviction petition under R.C. 2953.21. Crim.R. 33(A)(6) provides grounds for a new trial where "new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial." Not only did Yarbrough not file a motion for a new trial, but by entering a guilty plea, he is precluded from making a motion for a new trial. *State v. Clark*, 2017-Ohio-120,

¶ 13 (2d Dist.). Therefore, the “new evidence” standard in Crim.R. 33(A)(6) does not apply to Yarbrough’s case.

{¶ 32} *Bethel* also involved a successive and untimely filed postconviction petition under R.C. 2953.21. When considering the applicable standards to apply, the *Bethel* court held that the burden was on the petitioner to establish that they were unavoidably prevented from discovering the facts upon which their claim relied and to establish, by clear and convincing evidence, that no reasonable factfinder would have found them guilty but for the constitutional error at trial. *Bethel* at ¶ 20, citing R.C. 2953.23(A)(1). Yarbrough’s petition, however, was neither successive nor untimely like the one in *Bethel*. Thus, the analysis in *Bethel* also does not apply to Yarbrough’s petition.

{¶ 33} Yarbrough’s second assignment of error is overruled.

IV. Conclusion

{¶ 34} Having overruled the assignments of error, we affirm the judgment of the trial court.

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EPLEY, J., and HANSEMAN, J., concur.