

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MARION COUNTY**

STATE OF OHIO,

CASE NO. 9-25-27

PLAINTIFF-APPELLEE,

v.

CHRISTOPHER KEITH, JR.,

**OPINION AND
JUDGMENT ENTRY**

DEFENDANT-APPELLANT.

**Appeal from Marion County Common Pleas Court
General Division
Trial Court No. 2021-CR-0146**

Judgment Affirmed

Date of Decision: August 24, 2026

APPEARANCES:

Christopher Keith, Jr., Appellant

Allison M. Kesler for Appellee

MILLER, J.

{¶1} Defendant-appellant, Christopher Elan Keith, Jr. (“Keith”), appeals the September 23, 2025 judgment of the Marion County Court of Common Pleas denying his petition for postconviction relief. For the reasons that follow, we affirm.

{¶2} The cases arises from the April 2, 2021 traffic stop in which a Marion Police Officer observed a plastic bag containing white powder in Keith’s vehicle, which later tested positive for 27.93 grams of methamphetamine.

{¶3} On April 7, 2021, Keith was indicted by the Marion County Grand jury on a count of aggravated possession of drugs in violation of R.C. 2925.11(A)(1), a second-degree felony.¹

{¶4} The trial court appointed counsel to represent Keith on April 12, 2021. On May 3, 3021, the State filed its Response to Discovery, indicating it had provided “DVD – Officers B. Thomas, Barber, and Cochell’s body camera videos.” Keith’s trial counsel withdrew from representation on September 28, 2021. The trial court appointed replacement counsel for Keith on October 5, 2021. On November 2, 2021, the State filed an Identification of Discovery Provided indicating it had produced “Bodycams/Dash cam” to Keith’s replacement counsel.

¹ In Keith’s direct appeal from his convictions and sentence, this court recited much of the factual and procedural background of this case, and we will not duplicate those efforts here. *See State v. Keith*, 2023-Ohio-3428 (3d Dist.).

{¶5} A jury trial was held on April 7-8, 2022. At the trial, the State introduced approximately 12 minutes of Officer Thomas’s body-worn camera footage (State’s Exhibit 2) which the State explicitly described as “a portion” of Thomas’s body-worn camera recording. At the conclusion of the trial, the jury found Keith guilty as charged. The trial court sentenced Keith to an indeterminate prison term of eight to twelve years of incarceration.

{¶6} Keith filed a direct appeal wherein he raised two assignments of error, including a challenge to the effectiveness of his trial counsel. He argued that his trial counsel was ineffective for (1) failing to object to the State’s using redirect examination to establish venue; (2) failing to request a jury instruction regarding the jury’s consideration of the stipulated polygraph examination; and (3) failing to request a jury instruction regarding the jury’s consideration of expert testimony. *State v. Keith*, 2023-Ohio-3428, ¶ 7, 17 (3d Dist.), *appeal not accepted*, 2024-Ohio-1228. All of the claims Keith raised on direct appeal were unrelated to the body-worn camera recording. In an opinion issued on September 25, 2023, this Court overruled his assignments of error and affirmed his conviction and sentence. *Id.* at ¶ 16, 26-27.

{¶7} On November 3, 2023, Keith filed a motion with this Court for reopening the case. On November 27, 2023, this Court issued a judgment entry denying his application for reopening. Keith filed a motion for reconsideration of

opinion and judgment entry on December 12, 2023. This court denied that request as well.

{¶8} According to Keith, in November 2024, his sister obtained over 100 minutes of body-worn camera footage from the Marion Police Department through a public records request. According to his sister's affidavit, the footage showed Officer Barber searching Keith's vehicle approximately three minutes before Officer Thomas allegedly discovered the drugs.

{¶9} In response to the body-worn camera footage obtained by his sister, on April 4, 2025, Keith filed a motion for leave to file a motion for a new trial on the basis of the body-worn camera footage, which Keith claimed was "newly discovered evidence." On July 24, 2025, the State filed an affidavit with exhibits documenting that both of Keith's prior counsel received the complete body-worn camera recordings prior to trial. In a judgment entry filed on July 29, 2025, the trial court denied Keith's motion for a new trial. The court reasoned that Keith had failed to establish the presence of "newly discovered evidence" and had not established that he was unavoidably prevented from discovering said evidence.

{¶10} On September 8, 2025, Keith filed a petition for postconviction relief arguing that his trial counsel was ineffective for failing to investigate and present the body-worn camera footage, which Keith contends was exculpatory. Keith argued that he was unavoidably prevented from discovering this evidence because he lacked the intellectual and psychological capacity to employ reasonable

diligence. He submitted an affidavit describing mental health conditions including manic depression, schizophrenia, ADHD, and anxiety, along with physical ailments requiring medication he did not consistently receive in jail.

{¶11} On September 23, 2025, the trial court denied Keith’s petition for postconviction relief citing the court’s lack of jurisdiction due to the untimeliness of Keith filing the petition. In a detailed and well-reasoned opinion, the court concluded Keith failed to demonstrate he was unavoidably prevented from discovering the complete body-worn camera footage because: (1) the public court docket reflected the State had produced body-worn camera videos from three officers; (2) the trial transcript explicitly described the 12-minute video as “a portion” of Officer Thomas’s recording; and (3) Keith knew his arrest lasted approximately 40 minutes, but only 12 minutes of footage was shown at trial.

{¶12} Keith filed the instant appeal. He raises two assignments of error for our review.

First Assignment of Error

The trial court erred to the prejudice of petitioner-appellant when it denied his petition for postconviction relief on 9-23-25 for lack of jurisdiction after concluding he was unavoidably prevented from discovering the underlying facts upon which his petition relied, without considering and resolving evidence in the record indicating he was not intellectually or psychologically capable of conducting any level of diligence required.

Second Assignment of Error

The trial court erred to the prejudice of petitioner-appellant, abused its discretion, and violated his rights to Fundamental Fairness, Due Process of Law, and the Effective Assistance of Counsel, guaranteed by the 5th, 6th, and 14th Amendments to the United States Constitution when it dismissed the petition for postconviction relief, without a hearing or briefing, on 9-23-25 for lack of jurisdiction.

{¶13} Keith raises two assignments of error challenging the trial court's determination regarding the lack of jurisdiction to entertain the petition because Keith failed to demonstrate that he was "unavoidably prevented" from discovering body-worn camera footage forming the basis of his ineffective assistance of counsel claims.

Relevant Law

{¶14} "R.C. 2953.21 governs petitions for postconviction relief." *State v. Wine*, 2015-Ohio-4726, ¶ 10 (3d Dist.). The statute sets forth who may petition for postconviction relief and provides that: "[a]ny person who has been convicted of a criminal offense . . . and who claims 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" "may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief." R.C. 2953.21(A)(1)(a). The statute sets forth the time requirements for filing a petition for postconviction relief, and provides, in relevant part,

a petition under division (A)(1)(a)(i), (ii), or (iii) of this section shall be filed no later than three hundred sixty-five 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 or adjudication[.]

R.C. 2953.21(A)(2). “A trial court lacks jurisdiction to entertain an untimely or successive petition for postconviction relief unless the petitioner establishes that one of the exceptions in R.C. 2953.23(A) applies.” *State v. Cunningham*, 2016-Ohio-3106, ¶ 13 (3d Dist.), quoting *State v. Chavis*, 2015-Ohio-5549, ¶ 14 (10th Dist.). “Therefore, if the petition has been untimely filed, the trial court cannot consider the substantive merits of the petition and must summarily dismiss it without addressing the merits of the petition.” *State v. Unsworth*, 2015-Ohio-3197, ¶ 16 (6th Dist.), citing *State v. Flower*, 2015-Ohio-2335, ¶ 12 (7th Dist.) and *State v. Rodriguez*, 2015-Ohio-562, ¶ 6 (6th Dist.).

{¶15} However, as indicated, an exception to the jurisdictional time limit is contained in R.C. 2953.23(A), which states as follows:

(A) Whether a hearing is or is not held on a petition filed pursuant to [R.C. 2953.21] a court may not entertain a petition filed after the expiration of the period prescribed in division (A) of that section or a second petition or successive petitions for similar relief on behalf of a petitioner unless division (A)(1) or (2) of this section applies:

(1) Both of the following apply:

(a) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, 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 petitioner asserts a claim based on that right.

(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted[.]

(2) The petitioner was convicted of a felony, the petitioner is an offender for whom DNA testing was performed under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in [R.C. 2953.74(D)], and the results of the DNA testing establish, by clear and convincing evidence, actual innocence of that felony offense[.]

{¶16} Once a court has determined that a petition is untimely and no exception applies, no further inquiry into the merits of the case is necessary. *See State v. Morgan*, 2005-Ohio-427, ¶ 6 (3d Dist.), citing *State v. Beaver*, 131 Ohio App.3d 458 (11th Dist. 1998). Trial courts should dismiss untimely postconviction petitions for lack of jurisdiction; nevertheless, a trial court does not commit reversible error by denying an untimely postconviction petition. *State v. Hatfield*, 2008-Ohio-1377, ¶ 8 (10th Dist.). The trial court determined that Keith failed to establish an exception to the statutory time limit, and we review that decision under an abuse of discretion standard. *State v. Allen*, 2017-Ohio-7976, ¶ 10 (6th Dist.), citing *Unsworth*, 2015-Ohio-3197, at ¶ 16 and *Rodriguez*, 2015-Ohio-562, at ¶ 7.

{¶17} A defendant is “unavoidably prevented” from the discovery of facts if he had no knowledge of the existence of those facts and could not have, in the

exercise of reasonable diligence, learned of their existence within the time specified for filing his petition for postconviction relief. *State v. Holnapy*, 2013-Ohio-4307, ¶ 32 (11th Dist.), citing *State v. Sansom*, 2010-Ohio-1918, ¶ 9 (2d Dist.); *State v. Ruark*, 2015-Ohio-3206, ¶ 11 (10th Dist.), citing *State v. Turner*, 2007-Ohio-1468, ¶ 11 (10th Dist.), citing *State v. McDonald*, 2005-Ohio-798, ¶ 19 (6th Dist.). “And the ‘facts’ contemplated by R.C. 2953.23(A)(1)(a) are the historical facts of the case, which occurred up to and including the time of conviction.” *Ruark* at ¶ 11, citing *Turner* at ¶ 11.

{¶18} “[T]he petitioner bears the burden of proving that he was unavoidably prevented from discovering the evidence on which he must rely, before the trial court even has subject-matter jurisdiction to consider the petition.” *State v. Johnson*, 2024-Ohio-134, ¶ 26, citing R.C. 2953.23(A)(1). “‘The phrase ‘unavoidably prevented’ in R.C. 2953.23(A)(1)(a) means that a defendant was unaware of those facts and was unable to learn of them through reasonable diligence.’” *State v. Vinson*, 2021-Ohio-836, ¶ 16 (10th Dist.), quoting *Turner* at ¶ 11. “The Supreme Court also made clear ‘R.C. 2953.23(A)(1)(a) requires a petitioner to show that he was “unavoidably prevented”—not merely “prevented”—from discovering the facts on which he would rely.’” (Emphasis sic.) *State v. Gordon*, 2024-Ohio-530, ¶ 19 (10th Dist.), quoting *Johnson* at ¶ 24. “Thus ‘a petitioner filing an untimely postconviction petition must show that any delay in discovering the facts undergirding the petition was “incapable of being avoided or evaded.”’” *Id.*,

quoting *Johnson* at ¶ 24, quoting *Merriam-Webster's Collegiate Dictionary* 638 (11th Ed. 2003).

{¶19} “Whether a trial court has jurisdiction to consider an untimely petition for postconviction relief is a question of law to which we apply a de novo standard of review.” *State v. Pippins*, 2026-Ohio-1827, ¶ 8 (10th Dist.), quoting *State v. [L.A.A.]*, 2020-Ohio-643, ¶ 19 (10th Dist.). “This court must apply a manifest weight standard in reviewing a trial court’s findings on factual issues underlying the substantive grounds for relief, but we must review the trial court’s legal conclusions de novo.” *Vinson* at ¶ 9, quoting *State v. Kane*, 2017-Ohio-7838, ¶ 9 (10th Dist.).

Analysis

{¶20} Keith’s first assignment of error contends the trial court erred by concluding he was not unavoidably prevented from discovering the complete body-worn camera footage without considering evidence of his intellectual and psychological limitations. This argument fails because the trial court properly applied the “unavoidably prevented” standard, and Keith’s personal limitations do not excuse the statutory requirement that he could not have discovered the evidence through reasonable diligence.

{¶21} In its judgment entry denying Keith’s petition for postconviction relief, the trial court identified three independent bases supporting its conclusion that Keith could have discovered the complete body-worn camera footage through

reasonable diligence: publicly filed discovery responses, explicit trial testimony, and Keith's personal knowledge of the duration of his arrest.

{¶22} First, the State's May 3, 2021 Response to Discovery, docketed as part of the public record, expressly listed "DVD – Officers B. Thomas, Barber, and Cochell's body camera videos." Keith admitted he reviewed the court docket in July to September 2021 and could request docket sheets from the clerk. With reasonable diligence—a review of the public docket—Keith could have discovered as early as May 3, 2021 that the State had produced body-worn camera recordings from three officers, not just the 12-minute excerpt shown at trial.

{¶23} Second, the trial transcript described State's Exhibit 2 as "a portion" of Officer Thomas's body-worn camera recording. Keith admitted he had a copy of the trial transcript. Accordingly, the reference to the "portion" of the recording put Keith on notice that additional footage existed beyond the 12 minutes introduced at trial.

{¶24} Third, Keith's personal knowledge of his arrest provided further grounds for inquiry. Keith knew his arrest lasted approximately 40 minutes, but only 12 minutes of video was introduced at trial. This discrepancy alone should have alerted Keith to the existence of additional body-worn camera footage and warranted further inquiry about what other recordings might exist.

{¶25} As the trial court found, Keith had multiple indications in the public record and trial transcript that additional footage existed, making the complete recordings reasonably discoverable.

{¶26} Keith argues that the trial court failed to consider evidence that he lacked the intellectual and psychological capacity to conduct the requisite diligence. He points to a fourth-grade reading level, history of mental illness, lack of consistent-medication in jail, and physical health problems as factors preventing him from discovering the evidence. While these circumstances may warrant compassion, they do not satisfy the legal standard for unavoidable prevention. The “unavoidably prevented” standard focuses on whether the facts were reasonably discoverable, not whether the particular defendant possessed the subjective capacity to discover them.

{¶27} Moreover, Keith had access to legal assistance throughout the relevant period. He was represented by two court-appointed attorneys who had the complete body-worn camera footage. After his conviction, he filed multiple pro se motions and appeals. The reasonable diligence standard does not require defendants to “out-think” their lawyers, as Keith contends, but it does require them to review public court records and ask basic questions about discrepancies in the evidence—tasks Keith was capable of performing.

{¶28} Keith argues that the trial court’s July 29, 2025 order “established” as a new fact that both defense attorneys received the complete body-worn camera

footage, and he was unavoidably prevented from discovering this fact until July 2025.

{¶29} However, as the trial court correctly noted it “did not create or establish anything” but “merely acknowledged what the record reflects.” The fact that the State produced complete body camera recordings to defense counsel was documented in publicly filed discovery responses from May and November 2021. The trial court’s July 2025 order did not create this fact; it simply resolved Keith’s claim that the prosecutor suppressed the evidence by confirming what the record already showed. Second, even if the trial court’s order clarified an ambiguity about whether defense counsel actually received the footage, Keith’s petition relies on the underlying fact of the complete body-worn camera footage itself, not the fact of its production to counsel. The “facts upon which the petitioner must rely” under R.C. 2953.23(A)(1) are the alleged exculpatory contents of the body-worn camera recordings, which Keith discovered in November 2024. Whether those recordings were provided to his attorneys or suppressed by the prosecutor is a legal theory, not the historical fact forming the basis of his ineffective assistance claim. *Ruark*, 2015-Ohio-3206, at ¶ 11.

{¶30} Accordingly, the trial court did not err by denying his petition for postconviction relief. Keith’s first assignment of error is overruled.

{¶31} In his second assignment of error, Keith contends that the trial court abused its discretion and violated his constitutional rights by dismissing the petition without holding a hearing.

{¶32} “The filing of a petition for postconviction relief does not automatically entitle the petitioner to an evidentiary hearing.” *State v. Andrews*, 2011-Ohio-6106, ¶ 11 (3d Dist.), citing *State v. Calhoun*, 86 Ohio St.3d 279, 282 (1999). Rather, “[b]efore granting a hearing on a petition filed under [R.C. 2953.21(A)], the court shall determine whether there are substantive grounds for relief.” R.C. 2953.21(D).

{¶33} “In making such a determination, the court shall consider, in addition to the petition, the supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court’s journal entries, the journalized records of the clerk of the court, and the court reporter’s transcript.” R.C. 2953.21(D).

{¶34} “[I]f the court determines that there are no substantive grounds for relief, it may dismiss the petition without an evidentiary hearing.” *State v. Jones*, 2007-Ohio-5624, ¶ 14 (3d Dist.). “The decision to grant the petitioner an evidentiary hearing is left to the sound discretion of the trial court.” *Andrews* at ¶ 11. Accordingly, “[w]e review the trial court’s dismissal of a postconviction petition without a hearing for abuse of discretion.” *State v. Jeffers*, 2011-Ohio-3555, ¶ 22 (10th Dist.). An abuse of discretion suggests the trial court’s decision is

unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). While the abuse of discretion standard applies, an appellate court is not to substitute its judgment for that of the trial court. *State v. Thompson*, 2017-Ohio-792, ¶ 11 (3d Dist.).

{¶35} “Substantive grounds for relief exist and a hearing is warranted if the petitioner produces sufficient credible evidence to demonstrate that the petitioner suffered a violation of the petitioner’s constitutional rights.” *State v. Yarbrough*, 2001 Ohio App. LEXIS 1930, *10 (3d Dist. Apr. 30, 2001). Where, as here, a petitioner asserts that they were deprived of their constitutional right to the effective assistance of counsel, “the petitioner bears the initial burden to submit evidentiary documents containing sufficient operative facts to demonstrate the lack of competent counsel and that the defense was prejudiced by counsel’s ineffectiveness.” *State v. Jackson*, 64 Ohio St.2d 107 (1980), syllabus. A petitioner who fails to carry his initial burden with respect to either prong of his ineffective-assistance-of-counsel claim consequently fails to demonstrate that there are substantive grounds for relief, and the trial court may deny the petition without conducting an evidentiary hearing. *State v. Hoover-Moore*, 2008-Ohio-2020, ¶ 13 (10th Dist.). In addition, a trial court may properly deny a petition for postconviction relief without holding a hearing if the claims in the petition are barred by res judicata.

{¶36} As addressed in our discussion of Keith’s first assignment of error, a trial court lacks jurisdiction to consider the merits of an untimely petition for postconviction relief unless the petitioner establishes an exception to the timeliness requirement. *Pippins*, 2026-Ohio-1827, at ¶ 18. “[W]hen a trial court lacks jurisdiction over an untimely postconviction relief petition because the petitioner failed to establish an exception to the timeliness requirement, the court does not err by denying the untimely petition without an evidentiary hearing.” *Id.* See *State v. Dye*, 2024-Ohio-3191, ¶ 32 (8th Dist.) (“The trial court did err by holding a hearing when the petition was untimely and appellant had failed to demonstrate an exception under the statute.”).

{¶37} Here, the trial court lacked jurisdiction to consider the merits of Keith’s petition for postconviction relief because he failed to demonstrate that he was unavoidably prevented from discovering the information relied on in support of the petition. Thus, because the trial court lacked jurisdiction to consider the merits of the petition, it did not err by denying Keith’s petition without a hearing. See *State v. Peoples*, 2006-Ohio-2614, ¶ 10 (1st Dist.) (“[T]he purpose of a hearing on a postconviction claim is to aid the court in determining the claim on its merits. It follows that the court need not conduct a hearing on a postconviction claim that the court has no jurisdiction to entertain.”).

{¶38} Keith’s second assignment of error is overruled.

Conclusion

{¶39} For the foregoing reasons, Keith's assignments of error are overruled. Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the Marion County Court of Common Pleas.

Judgment Affirmed

ZIMMERMAN, P.J. and WILLAMOWSKI, J., concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. See App.R. 30.

Mark C. Miller, Judge

William R. Zimmerman, Judge

John R. Willamowski, Judge

DATED:
/jlm