

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

ANDRE D. SPEARMAN

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Craig R. Baldwin, J.

Case No. 2023-CA-0017

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Richland County Court of  
Common Pleas, Case No. 98-CR-447R

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 16, 2023

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JODIE SCHUMACHER  
Prosecuting Attorney  
Richland County, Ohio  
38 South Park Street, Second Floor  
Mansfield, Ohio 44902

ANDRE D. SPEARMAN  
878 Coitsville-Hubbard Road  
Youngstown, Ohio 44505

*Hoffman, P.J.*

{¶1} Defendant-appellant Andre D. Spearman appeals the March 15, 2023 Judgment Entry entered by the Richland County Court of Common Pleas, which overruled his motion for post-conviction relief. Plaintiff-appellee is the state of Ohio.

#### STATEMENT OF THE CASE<sup>1</sup>

{¶2} On August 6, 1998, following a bindover from Mansfield Municipal Court, the Richland County Grand Jury indicted Appellant on one count of aggravated robbery, in violation of R.C. 2911.01(A)(1), a felony of the first degree; and one count of grand theft, in violation of R.C. 2913.02(A)(1), a felony of the fourth degree, in Richland County Court of Common Pleas Case No. 98-CR-447H (“Case No. 98-CR-447H”). The date of the offenses alleged in the indictment was July 13, 1998. Appellant turned 18 years old on March 20, 1998. Appellant appeared for arraignment on August 25, 1998, and entered a plea of not guilty to the indictment.

{¶3} On October 9, 1998, Appellant appeared before the trial court, withdrew his former pleas of not guilty, and entered guilty pleas to both counts in the indictment. The trial court conducted a sentencing hearing on November 20, 1998. The trial court imposed an aggregate prison term of 5 ½ years.

{¶4} While Appellant was serving his sentence in Case No. 98-CR-447H, he became a suspect in a murder/rape, which occurred on July 4, 1998. Appellant subsequently was charged with one count of aggravated murder, in violation of R.C. 2903.01, a felony of the first degree; one count of aggravated robbery, in violation of R.C. 2911.01, a felony of the first degree; and one count of aggravated burglary, in violation of

---

<sup>1</sup> A Statement of the Facts underlying Appellant's convictions and sentence is not necessary to our disposition of this appeal.

R.C. 2911.11, a felony of the first degree, in Richland County Court of Common Pleas Case No. 99-CR-610 (“Case No. 99-CR-610”). In June, 2000, Appellant was sentenced to a definite term of incarceration of 15 years to be served consecutively to a 30 year to life sentence.

{¶5} Appellant completed his sentence in Case No. 98-CR-447H in January, 2004. On February 27, 2023, Appellant filed a pro se Motion to Set Aside or Vacate Void Judgment. Therein, Appellant asserted the trial court lacked subject matter jurisdiction as the juvenile court had exclusive jurisdiction over him until he turned 21 years old. Via Judgment Entry filed March 15, 2023, the trial court overruled Appellant’s motion. The trial court treated the motion as a petition for post-conviction relief. The trial court found the petition to be untimely, and Appellant (1) failed to establish he was unavoidably prevented from discovery of the facts upon which he relied to present his claim and (2) failed to show by clear and convincing evidence, but for constitutional error at trial, no reasonable factfinder would have found him guilty of the offenses for which he was convicted. In addition, the trial court concluded Appellant’s petition was barred by res judicata. The trial court further found Appellant’s argument the juvenile court had exclusive jurisdiction over him was without merit.

{¶6} It is from this judgment entry Appellant appeals, raising as his sole assignment of error:

TRIAL COURT ERRS BY CONVERTING APPELLANT'S ARGUMENT INTO AN UNTIMELY PETITION FOR POST-CONVICTION RELIEF UNDER R.C. 2953.21, ET SEQ AND OVERRULING IT AS SUCH IN ADDITION TO CLAIMING THAT THE APPELLANT'S ARGUMENT IS WITHOUT MERIT.

I

{¶17} In his sole assignment of error, Appellant asserts the trial court erred in treating his motion to vacate void judgment as a petition for post-conviction relief and in finding his argument was without merit. We disagree.

{¶18} "Where a criminal defendant, subsequent to his or her direct appeal, files a motion seeking vacation or correction of his or her sentence on the basis that his or her constitutional rights have been violated, such a motion is a petition for postconviction relief as defined in R.C. 2953.21." *State v. Reynolds* (1997), 79 Ohio St.3d 158, syllabus. Pursuant to *Reynolds*, we find Appellant's motion to vacate void judgment was a petition for post-conviction relief and the trial court did not err in treating it as such.

{¶19} R.C. 2953.21(A)(2) provides:

{¶10} Except as otherwise provided in section 2953.23 of the Revised Code, a petition under division (A)(1) of this section shall 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 or adjudication \* \* \*. If no appeal is taken, except as otherwise provided in section 2953.23 of the Revised Code, the petition shall be filed no later than one hundred eighty days after the expiration of the time for filing the appeal.

{¶11} In order for a trial court to recognize an untimely or successive postconviction petition pursuant to R.C. 2953.23(A)(1), both of the following requirements must 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 petition 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 \* \*

\* .

R.C. 2953.23(A)(1).

{¶12} A court has no jurisdiction to hear an untimely petition for post-conviction relief unless the movant meets the requirements in R.C. 2953.23(A). *State v. Demastry*, Fairfield App. No. 05CA14, 2005-Ohio-4962, ¶ 15. Appellant filed his petition for post-conviction relief almost 25 years after he was convicted and sentenced, and almost two decades after he completed his sentence in Case No. 98CR447H. Having reviewed the

record and Appellant's brief, we find Appellant completely failed to demonstrate compliance with the requirements of R.C. 2953.23(A)(1).

{¶13} Appellant further contends the trial court erred in finding his argument lacked merit. Appellant asserts the juvenile court had “continuing original exclusive subject matter jurisdiction” at the time of the offenses in Case No. 98CR447H, and until he was 21 years old, as he had been convicted as a juvenile in 1994 (Richland County Court of Common Pleas, Juvenile Division, Case No. 9427286).

{¶14} In its March 15, 2023 Judgment Entry, the trial court concluded:

Pursuant to R.C. 2931.03, the court of common pleas has original subject matter jurisdiction of criminal cases. (Footnote omitted). A common pleas court has original jurisdiction in felony cases and its jurisdiction is invoked by the return of an indictment. (Footnote omitted). So, in general, the common pleas court has original subject matter jurisdiction. The exception for this rule would be for juvenile cases.

As courts of limited and special subject matter jurisdiction, juvenile courts can exercise only the powers and jurisdiction conferred by Ohio's Juvenile Court Act, R.C. Chapter 2151. “The juvenile court has exclusive jurisdiction over matters pertaining to allegedly delinquent children. R.C. 2151.23(A). (Footnote omitted). Delinquent children have been defined essentially as those persons who are under the age of eighteen at the time they are said to have violated a state or federal law. R.C. 2151.011(B)(1). (Footnote omitted).

The juvenile court, therefore, does not have jurisdiction over offenses that are committed after an individual turns eighteen. \* \* \*

While the juvenile court retained the jurisdiction to punish [Appellant] for crimes that he committed when he was a juvenile until the [sic] he turned twenty-one, the juvenile court had no jurisdiction over crimes that occurred after [Appellant] turned eighteen years old. [Appellant] was eighteen years old when the underlying crime in this case was committed.

March 15, 2023 Judgment Entry, pp. 4-5, unpaginated.

{¶15} We agree with the sound rational of the trial court. Because Appellant was 18 years old when he committed the felonies in Case No. 98CR447H, the court of common pleas had original subject matter jurisdiction over him. Accordingly, we find the trial court did not err in finding Appellant's argument to be without merit.

{¶16} Appellant's sole assignment of error is overruled.

{¶17} The judgment of the Richland County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Wise, J. and

Baldwin, J. concur

