

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
STARK COUNTY, OHIO

STATE OF OHIO,

Plaintiff - Appellee

-vs-

FLOYD J. COSAVAGE, JR.,

Defendant - Appellant

Case No. 2026CA00039

Opinion And Judgment Entry

Appeal from the Stark County Common Pleas
Court, Case No. 2021 CR 2758

Judgment: Affirmed

Date of Judgment Entry: August 13, 2026

BEFORE: William B. Hoffman; Craig R. Baldwin; Robert G. Montgomery, Judges

APPEARANCES: KYLE L. STONE, Stark County Prosecuting Attorney by
CHRISTOPHER A. PIEKARSKI, for Plaintiff-Appellee; Floyd J. Cosavage, Jr., PRO SE,
Defendant-Appellant.

Montgomery, J.

{¶1} Defendant-appellant, Floyd J. Cosavage, Jr., appeals the judgment entered by the Stark County Common Pleas Court dismissing his petition for postconviction relief on the basis it was untimely filed. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On July 28, 2021, Appellant fled from police in a high-speed motorcycle chase, in which he eventually crashed. Initially, Appellant was charged with multiple offenses in the Alliance Municipal Court. He was bound over to the Stark County Court of Common

Pleas on December 29, 2021, and was indicted by the Stark County Grand Jury on February 2, 2022, on a single count of failure to comply with an order or signal of a police officer. Appellant was convicted of the charge following his plea of guilty, and the trial court sentenced him to eighteen months of incarceration. Appellant did not appeal.

{¶3} Appellant filed a petition for postconviction relief on April 8, 2024, and filed supplemental petitions on May 10 and on May 20, 2024. Appellant challenged the trial court's jurisdiction. The trial court dismissed the petitions as untimely on September 26, 2024. Appellant did not appeal.

{¶4} On December 16, 2025, Appellant filed a "motion to vacate void judgment and dismiss charge for lack of subject matter jurisdiction." The trial court reclassified the motion as a petition for postconviction relief and dismissed it as untimely filed. It is from the January 23, 2026, judgment of the trial court Appellant prosecutes his appeal, assigning as error:

"I. THE TRIAL COURT ERRED BY RECLASSIFYING APPELLANT'S MOTION TO VACATE VOID JUDGMENT AND DISMISS CHARGE FOR LACK OF SUBJECT MATTER JURISDICTION AS A PETITION FOR POSTCONVICTION RELIEF WITHOUT ADJUDICATING THE THRESHOLD JURISDICTIONAL CHALLENGE ACTUALLY PRESENTED."

"II. THE TRIAL COURT ERRED BY DENYING THE MOTION AS UNTIMELY UNDER R.C. 2953.21 AND R.C. 2953.23 WITHOUT FIRST DETERMINING WHETHER THE FILING PRESENTED A TRUE THRESHOLD CHALLENGE TO THE COURT'S AUTHORITY TO PROCEED."

“III. THE TRIAL COURT ERRED BY DENYING RELIEF WITHOUT RULING ON THE ACTUAL THRESHOLD ISSUES PRESENTED, INCLUDING THE SEPARATELY RAISED DISMISSAL AND DOUBLE-JEOPARDY ISSUES BEARING DIRECTLY ON THE VALIDITY OF THE PROCEEDINGS.”

“IV. THE TRIAL COURT ERRED BY REFUSING TO CONFRONT THE FRACTURED AUTHORITY RECORD SURROUNDING THE JULY 28, 2021 INCIDENT, INCLUDING THE ALLIANCE BINDOVER PACKAGE, THE LATER NARROWED STARK INDICTMENT, THE APRIL 18, 2022 DOCKET TENSION, THE SUMMIT COUNTY POST-RELEASE-CONTROL FRAMEWORK, AND THE DECEMBER 2021 APA CUSTODY SEQUENCE.”

I., II.

{¶5} We address Appellant’s first and second assignments of error together, as both argue the trial court erred in reclassifying Appellant’s motion to vacate a void judgment as a petition for postconviction relief pursuant to R.C. 2953.21. We disagree.

{¶6} Despite its caption, a motion meets the definition of a petition for postconviction relief subject to R.C. 2953.21(A)(1) and may be properly reclassified as such if the motion: (1) was filed subsequent to the defendant’s direct appeal, (2) claims a denial of constitutional rights, (3) seeks to render the judgment void, and (4) asks for vacation of the judgment and sentence. *State v. Reynolds*, 79 Ohio St.3d 158, 160. *See, e.g., State v. Cline*, 2014-Ohio-4503, ¶ 7 (2d Dist.) (“motion to vacate sentence and judgment due to lack of subject matter jurisdiction and lack of a charging instrument” should have been reclassified as a petition for postconviction relief); *State v. Spearman*, 2023-Ohio-2872, ¶ 8 (5th Dist.) (motion to vacate a void judgment was a petition for postconviction relief and the trial court did not

err in treating it as such); *State v. Roberson*, 2002-Ohio-4272, ¶ 12 (5th Dist.) (trial court did not err in treating motion to vacate a void judgment as a petition for postconviction relief).

{¶7} In the title, Appellant's motion purports to raise lack of subject matter jurisdiction, which can be raised at any time. *See, e.g., State v. Bess*, 2012-Ohio-3333 (5th Dist.). However, the argument raised in the body of Appellant's motion is that Portage County had imposed judgment and punishment arising from the same incident before the indictment in the instant case was issued by the Stark County Grand Jury. Appellant's claim is therefore fundamentally a constitutional claim that his prosecution in Stark County was barred by Double Jeopardy, and not a challenge to the subject matter jurisdiction of the Stark County Common Pleas Court. As such, Appellant's petition met the criteria for a petition for postconviction relief, and we find the trial court did not err in treating it as such.

{¶8} The first and second assignments of error are overruled.

III., IV.

{¶9} In his third and fourth assignments of error, Appellant argues the trial court erred in dismissing his petition without reaching the merits. We disagree.

{¶10} Pursuant to R.C. 2953.21(A)(2)(a), if no appeal was taken from the judgment of conviction, a petition for postconviction relief shall be filed no more than three hundred and sixty-five days after the expiration of the time for filing the appeal. Appellant was required to file an appeal on or before May 22, 2022. Appellant's petition for postconviction relief was filed on December 16, 2025, and was therefore untimely. Further, Appellant's petition was a successive petition for postconviction relief.

{¶11} A trial court has no jurisdiction to hear an untimely petition for postconviction relief unless the movant meets requirements set out in R.C. 2953.23(A). *State v. Mason*, 2023-

Ohio-1200, ¶ 30 (5th Dist.). Appellant's petition does not attempt to meet the requirements of R.C. 2953.23(A), and thus the trial court was without jurisdiction to hear his untimely filed and successive petition for postconviction relief.

{¶12} The third and fourth assignments of error are overruled.

CONCLUSION

{¶13} The judgment of the Stark County Common Pleas Court is affirmed.

{¶14} Costs are assessed to Appellant.

By: Montgomery, J.

Hoffman, P.J. and

Baldwin, J. concur.