[Cite as *State v. Bollar*, 2026-Ohio-3377.]

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

STATE OF OHIO Plaintiff - Appellee -vs- MARQUIS L. BOLLAR Defendant - Appellant	Case No. 2026CA00112 Opinion and Judgment Entry Appeal from the Stark County Court of Common Pleas, Case No. 2019CR1620 Judgment: Affirmed Date of Judgment Entry: August 27, 2026

BEFORE: William B. Hoffman; Craig R. Baldwin; Kevin W. Popham, Judges

APPEARANCES: Kyle L. Stone, Stark County Prosecuting Attorney, Christopher A. Piekarski, Assistant Prosecuting Attorney, for Plaintiff-Appellee; Marquis L. Bollar, Pro se for Defendant-Appellant.

Hoffman, P.J.

{¶1} Defendant-Appellant Marquis Bollar appeals the May 13, 2026, Judgment of the Stark County Common Pleas Court which denied his Pro Se Petition for Post-Conviction Relief and Request for an evidentiary hearing. Plaintiff-Appellee is the State of Ohio.

STATEMENT OF THE CASE

{¶2} On October 17, 2019, the Stark County Grand Jury returned a four-count indictment charging Appellant as follows: Count One: Felony Murder; Count Two: Involuntary Manslaughter; Count Three: Felonious Assault; Count Four: Having Weapons While Under Disability. Each count of the indictment also contained a firearm specification.

{¶3} Appellant's charges arose after he shot and killed Erica Delong on August 13, 2019. At the time of the shooting, Appellant was a convicted felon under disability and was not permitted to possess a firearm. A complete review of the facts may be found in our opinion in *State v. Bollar*, 2021-Ohio-1578 (5th Dist.) but is not necessary for our resolution of this appeal.

{¶4} On March 6, 2020, the State dismissed Count One of the Indictment and Appellant entered pleas of guilty to Counts Two through Four and the attendant firearm specifications.

{¶5} During the sentencing hearing Appellant argued, and the State did not dispute, the counts of Involuntary Manslaughter (Count Two) and Felonious Assault (Count Three) merged for purposes of sentencing but the count of Having Weapons Under Disability (Count Four) did not. (Plea/Sent. T. at 30, 32, 34).

{¶6} The State argued R.C. §2929.14(B)(1)(g) required two of the three firearm specifications to run consecutively to one another and consecutive to the underlying charge. (Plea/Sent. T. at 29-30). Appellant's counsel disagreed and advanced an allied offenses argument, contending all three specifications were the result of one act by one person and therefore only one firearm specification could be imposed. (Plea/Sent. T. at 35).

{¶7} After taking a recess to consider matters presented during Appellant's plea as well as the application of R.C. §2929.14(B)(1)(g), the trial court sentenced Appellant to a minimum mandatory sentence of 11 years for involuntary manslaughter. The court also imposed three years for the attendant firearm specification, to be served prior to any other sentence. (Plea/Sent. T. at 51).

{¶8} While the trial court imposed no sentence for the merged Felonious Assault charge, it found it was required to impose the attached firearm specification and sentenced Bollar to three years on the specification. (Plea/Sent. T. at 51).

{¶9} For Having Weapons while Under Disability, the trial court imposed a thirty-six-month sentence and merged the attendant firearm specification. After making the appropriate findings, the trial court ordered Appellant to serve this sentence consecutive to his sentence for Involuntary Manslaughter and the two firearm specifications for an aggregate minimum term of 20 years to a maximum term of 25.5 years. (Plea/Sent. T. at 52-54).

{¶10} Appellant filed a direct appeal arguing the trial court erred when it sentenced him to three years for the firearm specification attendant to the charge of felonious assault after it had merged the charges of involuntary manslaughter and felonious assault as allied offenses. Appellant argued because the two charges merged, he could only be sentenced for one firearm specification and therefore his sentence was contrary to law. This Court rejected Appellant's argument and affirmed the trial court, finding:

> Bollar pled guilty to multiple felonies, to wit: involuntary manslaughter, felonious assault and having weapons while under a disability. The determination of guilt based upon his guilty pleas to each offense survived the trial courts merger of the felonious assault and involuntary manslaughter offenses. *State v. Whitfield*, 124 Ohio St.3d 319, 2010-Ohio-2, 922 N.E.2d 182. Therefore, the trial court was required by R.C. 2929.14(B)(1)(g) to sentence Bollar to the two most serious firearm specifications that accompanied his felony guilty pleas. R.C. 2929.14(B)(1)(g).

We therefore find that the trial court did not err in concluding that the firearm specifications accompanying the involuntary manslaughter and felonious assault were not subject to merger pursuant to R.C. 2929.14(B).

The trial court did not err in ordering two of the three firearm specifications to run consecutively pursuant to R.C. 2929.14(B)(1)(g).

{¶11} *State v. Bollar*, 2021-Ohio-1578, ¶¶ 28-30 (5th Dist.).

{¶12} Appellant filed a Motion to Certify a Conflict with the Supreme Court of Ohio on the question of "Whether Ohio's legislature has specifically authorized cumulative punishments for multiple firearm specifications that were committed as part of the same act or transaction under the narrowly tailored, specifically designated circumstances set forth in R.C. 2929.14(B)(1)(g), when the underlying felonies attendant to the firearm specifications are merged at sentencing as allied offenses of similar import pursuant to R.C. 2929.14(C)(4)." This Court certified the conflict, and the Supreme Court determined a conflict existed and ordered briefing on the certified question. *State v. Bollar*, 2021-Ohio-2795. The Supreme Court also accepted jurisdiction over the sole proposition of law submitted in Appellant's discretionary appeal: "Trial courts cannot impose a prison sentence for a specification attached to an offense that merged under R.C. 2941.25 and did not result in a conviction." *Id.*

{¶13} On December 9, 2022, the Supreme Court answered the certified question in the affirmative, affirmed the decision of this Court, and found "the plain language of R.C. 2929.14(B)(1)(g) requires that offenders like Bollar receive separate prison terms for convictions on multiple firearm specifications . . ." *State v. Bollar*, 2022-Ohio-4370, ¶ 26.

{¶14} On January 23, 2026, Appellant filed a motion in the trial court titled "Pro Se Motion to Vacate Sentence Imposed Contrary to Law." In his motion, Appellant raised the same "unlawful firearm specification stacking" argument he raised before the Ohio Supreme Court and further claimed because the firearm specifications were illegally stacked, his minimum and maximum terms were miscalculated. The State filed a response arguing Appellant's motion was an untimely motion for post-conviction relief.

{¶15} On February 23, 2026, the trial court issued a Nunc Pro Tunc Judgment Entry reiterating the calculation of Appellant's minimum and maximum terms but clarifying the indefinite sentence for the underlying offenses was separate from the sentence for the firearm specifications which Appellant was required to serve prior to and consecutive to the indefinite sentence for the underlying offenses. By Judgment Entry filed March 12, 2026, the trial court denied the balance of Appellant's motion to vacate, which it treated as an untimely petition for post-conviction relief.

{¶16} Appellant appealed the trial court's March 12, 2026, decision to this Court which affirmed the decision of the trial court. See *State v. Bollar*, Stark App. No. 2026CA00065 (5th Dist.)

{¶17} On March 30, 2026, during the pendency of his appeal in case number 2026CA00065, Appellant filed a second Petition for Post-conviction Relief. On April 29, 2026, the State filed a memorandum in opposition to Appellant's petition. By Judgment Entry filed May 13, 2026, the trial court denied Appellant's Petition as being both untimely and successive.

{¶18} On May 19, 2026, Appellant filed a Motion for Clarification/Reconsideration, which the trial court denied on May 28, 2026.

{¶19} This matter now comes before this Court for a third time with Appellant appealing the trial court's May 13, 2026, decision, raising six assignments of error:

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT ERRED IN CONCLUDING THAT APPELLANT FAILED TO SATISFY THE REQUIREMENTS OF R.C. 2953.23(A)(1).

II. THE TRIAL COURT ERRED IN DISMISSING APPELLANTS [SIC] PETITION WITHOUT AN EVIDENTIARY HEARING.

III. THE TRIAL COURT ERRED IN APPLYING RES JUDICATA TO CLAIMS DEPENDENT UPON EVIDENCE OUTSIDE THE ORIGINAL RECORD.

IV. THE TRIAL COURT ERRED IN CONCLUDING THAT APPELLANT FAILED TO PRESENT SUFFICENT EVIDENCE DEHORS THE RECORD TO WARRANT FURTHER REVIEW.

VI. THE TRIAL COURT ERRED BY DENYING APPELLANT MEANINGFUL ACCESS TO ELECTRONIC EVIDENCE ON NECESSARY MATERIALS PRIOR TO DISMISSING THE PETITION FOR POST-CONVICTION RELIEF.

VII. THE TRIAL COURT ERRED BY DENYING APPELLANTS [SIC] MOTION FOR LEAVE TO FILE A REPLY MEMORANDUM AND DIMISSING THE PETITION BEFORE THE APPELLANT WAS

AFFORDED A MEANINGFUL OPPORTUNITY TO RESPOND TO THE STATES [SIC] OPPOSITION.

I., II., IV.

{¶20} Because they are interrelated, we will address Appellant's first, second and fourth assignments of error together.

Post-Conviction Relief

{¶21} Pursuant to R.C. §2953.21(A)(1)(a), a convicted defendant who asserts a denial or infringement of constitutional rights sufficient to render his conviction void or voidable may file a petition asking the court that imposed sentence to vacate the judgment or sentence or to grant other relief.

{¶22} A petition for post-conviction relief is intended as a means to reach constitutional issues that would otherwise be impossible to reach because the evidence supporting those issues is not contained in the record of the petitioner's criminal conviction. *State v. Smith*, 2017-Ohio-2616, ¶ 13. A petition for post-conviction relief is a civil collateral attack on a criminal judgment, not an appeal of that judgment. *State v. Calhoun*, 1999-Ohio-102. A petition for post-conviction relief does not, therefore, provide a petitioner with a second opportunity to litigate his conviction, nor is the petitioner automatically entitled to an evidentiary hearing on the petition. *State v. Jackson*, 64 Ohio St.2d 107, 110 (1980), *State v. Lewis*, 2008-Ohio-3113, ¶ 8 (5th Dist.).

{¶23} R.C. §2953.21(A)(2)(a) requires a petition for post-conviction relief "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." *State v. Nelson*, 2024-Ohio-1792, ¶ 8 (5th Dist.).

{¶24} A trial court's decision to grant or deny a post-conviction petition filed pursuant to R.C. §2953.21 should be upheld absent an abuse of discretion. *State v. Gondor*, 2006-Ohio-6679, ¶ 58; *State v. Morris*, 2026-Ohio-2576, ¶ 40 (5th Dist.). "But whether a trial court has subject-matter jurisdiction to entertain an untimely, second, or successive petition for postconviction relief is a question of law, which we review de novo." *Id.*, citing *State v. Apanovitch*, 2018-Ohio-4744, ¶ 24.

{¶25} In denying Appellant's petition, the trial court stated:

> Upon review, the Court finds that Defendant's motion is both untimely and successive under R.C. 2953.21 and fails to satisfy the jurisdiction requirements of R.C. 2953.23. As such, the Court finds that it is without jurisdiction to rule upon the merits of the Defendant's motion.

{¶26} (Judgment Entry, May 13, 2026, at 1).

{¶27} As this Court stated in Appellant's previous appeal:

> Appellant's petition for post-conviction relief was grossly untimely and he failed to raise or argue that he met the requirements of R.C. 2953.23(A)(1). The trial court was therefore without jurisdiction to consider the petition. Additionally, …, Bollar challenged his sentence in his direct appeal. Bollar's sentencing challenge is therefore barred by res judicata.

{¶28} *(State v. Bollar*, Stark App. No. 2026CA00065 (5th Dist.)).

{¶29} For the reasons stated in *State v. Bollar*, Stark App. No. 2026CA00065 (5th Dist.), we find Appellant's first, second and fourth assignments of error not well-taken and overrule same.

III.

{¶30} In his third assignment of error, Appellant argues the trial court erred in applying *res judicata* to his claims.

{¶31} It is well-settled, "pursuant to *res judicata*, a defendant cannot raise an issue in a [petition] for post-conviction relief if he or she could have raised the issue on direct appeal." *State v. Elmore*, 2005-Ohio-5940 (5th Dist.) Under the doctrine of *res judicata*, a final judgment of conviction bars the defendant who was represented by counsel from raising and litigating in any proceedings, except an appeal from that judgment, any defense or claimed lack of due process the defendant raised or could have raised at the trial which resulted in that judgment of conviction or on appeal from that judgment. *State v. Perry*, 10 Ohio St.2d 175 (1967) paragraph nine of the syllabus; *Grava v. Parkman Twp.*, 73 Ohio St.3d 379 (1995), syllabus. A defendant who was represented by counsel is barred from raising an issue in a petition for post-conviction relief if the defendant raised or could have raised the issue at trial or on direct appeal. *State v. Szefcyk*, 1996- Ohio 337.

{¶32} In its May 13, 2026, Judgment Entry, the trial court held:

{¶33} Notwithstanding the Court's denial based upon lack of jurisdiction, the Court finds that even if it were to consider the merits of the Defendant's motion, that the grounds sought for relief are unsupported by the evidence and barred by the doctrine of res judicata."

{¶34} (Judgment Entry, May 13, 2026, at 1).

{¶35} In *State v. Bollar*, Stark App. No. 2026CA00065 (5th Dist.), this Court likewise found *res judicata* was applicable in this case.

{¶36} Appellant's third assignment of error is overruled.

V.

{¶37} In his fifth assignment of error, Appellant seeks to challenge judgment entries not included in the notice of appeal filed in this matter, namely: (1) the trial court's April 30, 2026, judgment entry denying Appellant's "motion for an order authorizing receipt of electronic evidence"; and (2) the trial court's May 28, 2026, judgment entry denying Appellant's "motion for clarification/reconsideration."

{¶38} "The notice of appeal shall designate the judgment, order or part thereof appealed from." App.R. 3(D). Appellant's notice of appeal states he is only appealing "from the judgment entry denying defendants (sic) petition for Post Conviction Relief and Request for Evidentiary hearing entered by the Stark County Court of Common Pleas May 13, 2026."

{¶39} Because Appellant did not include the trial court's April 30, 2026, or May 28, 2026, judgment entries in his notice of appeal, we find we are without jurisdiction to consider any arguments regarding those judgment entries. "An appellate court 'is without jurisdiction to review a judgment or order that is not designated in the appellant's notice of appeal.' " *State v. Dixon*, 2004-Ohio-1593, ¶ 7 (9th Dist.), quoting *Slone v. Bd. of Embalmers & Funeral Dirs. of Ohio*, 123 Ohio App.3d 545, 548 (8th Dist. 1997); *State v. Bardwell-Patino*, 2021-Ohio-2048, ¶ 27 (9th Dist.), citing Dixon at 7, citing Slone at 548.

{¶40} Appellant's fifth assignment of error is overruled.

VI.

{¶41} In his sixth assignment of error, Appellant argues the trial court erred in denying him leave to file a reply in this matter. We disagree.

{¶42} "Under R.C. 2953.21, when a postconviction petition and the record of the case show that the petitioner is not entitled to relief, the trial court may summarily dismiss the petition, without further submissions from either party." (Emphasis added.) *State v. Dunlap*, 1998 WL 337041, *4 (1st Dist. June 26, 1998). "Postconviction relief proceedings are civil in nature, and the Rules of Civil Procedure do not require a court to permit rebuttal filings [t]hus, [Appellant] had no right to file a reply memorandum." (Emphasis added.) *State v. Askins*, 1997 WL 598401, *2 (1st Dist. Sept. 26, 1997), citing Civ.R. 7.

{¶43} Having found Appellant's petition was untimely, we find Appellant's sixth assignment of error not well-taken and overrule same.

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

{¶45} Costs to Appellant.

By: Hoffman, P.J.

Baldwin, J. and

Popham, J. concur.