

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

STATE OF OHIO

Plaintiff - Appellee

-vs-

ANTHONY DOMINIC KENNEDY,
SR.

Defendant - Appellant

Case Nos. 2026CA00021 & 2026CA00022

Opinion And Judgment Entry

Appeal from the Court of Common Pleas Case
Nos. 1998CR1019 & 1998CR0987A

Judgment: Affirmed

Date of Judgment Entry: September 10, 2026

BEFORE: Andrew J. King; Craig R. Baldwin; David M. Gormley, Judges

APPEARANCES: KYLE L. STONE, KAMEISHA J. JOHNSON, for Plaintiff-Appellee;
ANTHONY DOMINIC KENNEDY, SR., PRO SE, for Defendant-Appellant.

King, P.J.

{¶ 1} Defendant-Appellant Anthony Kennedy, Sr. appeals the January 22, 2026 judgment of the Stark County Court of Common Pleas which denied Kennedy's motion for postconviction relief, and the January 22, 2026 judgment of the Stark County Court of Common Pleas which denied his "Motion to Dismiss/Vacate Conviction due to State's Destruction of Documented Exculpatory Evidence and Discovery Violations." We affirm the trial court.

Facts and Procedural History

{¶ 2} On October 9, 1998, in case number 1998CR0987A, Kennedy pled guilty to one count of breaking and entering and one count of vandalism. On November 9, 1998 in case number 1998CR1019, Kennedy pled guilty to two counts of forgery and one count of

receiving stolen property. Kennedy was sentenced in each case according to law and did not file an appeal in either matter.

{¶ 3} Twenty-seven years later, on November 7, 2025, Kennedy filed motions for postconviction relief in each case. His petitions alleged destruction of exculpatory evidence or failure to preserve evidence, discovery violations, and ineffective assistance of counsel. The trial court denied both petitions without a hearing.

{¶ 4} Kennedy timely filed an appeal in each case and the matter is now before this court for consideration. He raises two assignments of error for our review as follows:

I

{¶ 5} "THE TRIAL COURT ERRED BY DISMISSING APPELLANT'S PETITIONS AS UNTIMELY WHERE APPELLANT SATISFIED THE STATUTORY GATEWAY UNDER R.C. 2953.23(A)(1)."

II

{¶ 6} "THE TRIAL COURT ABUSED ITS DISCRETION BY DISMISSING THE PETITIONS WITHOUT AN EVIDENTIARY HEARING WHERE SWORN AFFIDAVITS AND ATTACHED EXHIBITS SET FORTH SUBSTANTIVE GROUNDS FOR RELIEF."

I, II

{¶ 7} Because they are interrelated, we address Kennedy's assignments of error together. In his assignments of error, Kennedy argues the trial court erred when it dismissed his motions for postconviction relief without a hearing when he had met the requirements of R.C. 2953.23(A). We disagree.

Standard of Review

{¶ 8} A trial court's decision to grant or deny a petition for postconviction relief lies in the trial court's sound discretion and an appellate court will not disturb such a decision in the absence of an abuse of discretion. *State v. Sanders*, 2005-Ohio-4267, ¶ 8 (9th Dist.), citing *State v. Elkins*, 2003-Ohio-4522, ¶ 5 (9th Dist.). "Abuse of discretion" means an attitude that is unreasonable, arbitrary or unconscionable. *Huffman v. Hair Surgeon, Inc.*, 19 Ohio St.3d 83, 87 (1985). Most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary. *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990). An unreasonable decision is one backed by no sound reasoning process which would support that decision. *Id.* "It is not enough that the reviewing court, were it deciding the issue de novo, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result." *Id.*

Postconviction Relief Principles

{¶ 9} Although designed to address claimed constitutional violations, the postconviction relief process is a civil collateral attack on a criminal judgment, not an appeal of that judgment. *State v. Calhoun*, 86 Ohio St.3d 279, 281 (1999); *State v. Steffen*, 70 Ohio St.3d 399, 410 (1994). A petition for post-conviction relief does not provide a petitioner a second opportunity to litigate his conviction, nor is the petitioner automatically entitled to an evidentiary hearing on the petition. *State v. Lewis*, 2008-Ohio-3113, ¶ 8 (5th Dist.), citing *State v. Jackson*, 64 Ohio St.2d 107, 110 (1980).

{¶ 10} Pursuant to R.C. 2953.21(A)(2), a petition for postconviction relief must 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. If no appeal is taken, the petition must be filed no later than three hundred sixty-five days after the expiration of the time for filing the appeal.

{¶ 11} A trial court is without jurisdiction to hear an untimely petition for postconviction relief unless the petitioner meets exceptions contained in R.C. 2953.23(A). That section requires a petitioner to demonstrate:

(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 the constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted ...

{¶ 12} Res judicata is also applicable to this matter. "Under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed

lack of due process that was raised or could have been raised by the defendant at the trial which resulted in that judgment of conviction or on an 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.

Kennedy's Arguments

{¶ 13} Kennedy argues the trial court erred in dismissing his petition without a hearing because he satisfied the requirements of R.C. 2953.23(A). In regard to case number 1998CR1019, Kennedy argues the initials appearing on his *Miranda* waiver are a forgery, that his trial counsel failed to challenge the forgery through a motion to suppress, and therefore rendered ineffective assistance. He argues the discovery of the alleged forgery is newly discovered evidence. In regard to case number 1998CR0987A, Kennedy argues that no reasonable factfinder would have found him guilty of breaking and entering because the structure did not meet the definition of an "occupied structure."

{¶ 14} First, Kennedy's petitions for postconviction relief were grossly untimely and despite his claim to the contrary, he failed to meet the requirements of R.C. 2953.23(A). Kennedy never acknowledged the untimeliness of his petitions nor made any attempt to meet the R.C. 2953.23(A) requirements. Here on appeal he argues his discovery of the alleged forgery—27 years later—is newly discovered evidence. However, the waiver form existed before Kennedy entered his guilty pleas. Kennedy's claim that he was unaware of the alleged forgery does not transform the waiver into newly discovered evidence. *State v. Sanchez*, 2026-Ohio-1497, ¶ 25 (5th Dist.) citing *State v. Morris*, 2026-Ohio-37, ¶ 14 (8th Dist.)

{¶ 15} Moreover, Kennedy failed to support his claims with evidentiary-quality materials. Before a petitioner can be granted a hearing in proceedings for post-conviction relief

upon a claim of ineffective assistance of trial counsel, the petitioner bears the initial burden to submit evidentiary quality materials containing sufficient operative facts which demonstrate a substantial violation of any of trial counsel's essential duties, in addition to prejudice arising from that ineffectiveness. *State v. Church*, 2018-Ohio-368 (5th Dist.), citing *State v. Calhoun*, 86 Ohio St.3d 279 (1999). The failure to present essential operative facts in supporting evidentiary-quality materials warrants dismissal of the petition for post-conviction relief without a hearing. *State v. Murphy*, 1987 Ohio App. LEXIS 9525, (5th Dist., Oct. 29, 1987).

{¶ 16} While Kennedy alleges that his counsel failed to investigate the Miranda waiver and failed to share discovery with him, his allegations are conclusory and unsupported by any evidence outside the record beyond Kennedy's own self-serving affidavit. A petitioner's self-serving affidavit generally does not meet his required minimum level of cogency. *State v. Kapper*, 5 Ohio St.3d 36 (1983). Kennedy's affidavit failed to demonstrate a substantial violation of his counsel's essential duties and did not demonstrate prejudice arising from any alleged ineffectiveness.

{¶ 17} Because Kennedy failed to meet the requirements of R.C. 2953.23(A)(1), the trial court was without jurisdiction to consider his petitions.

{¶ 18} But even if that were not true, Kennedy could have challenged his allegations of ineffective assistance of counsel for failing to investigate the alleged forgery in a direct appeal, but failed to do so. So too, Kennedy could have raised his occupied structure argument in a direct appeal, but failed to do so. Kennedy's complaints are therefore barred by res judicata.

{¶ 19} Having found no error, we overrule Kennedy's assignments of error.

{¶ 20} The judgment of the Stark County Court of Common Pleas is affirmed. Costs to Appellant.

By: King, P. J.

Baldwin, J. and

Gormley, J. concur.