

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

STATE OF OHIO

Plaintiff - Appellee

-vs-

WILLIAM L. KELLEY

Defendant - Appellant

Case No. 2026CA00095

Opinion and Judgment Entry

Appeal from the Stark County Court of
Common Pleas, Case No. 2008CR0643A

Judgment: Affirmed

Date of Judgment Entry: October 7, 2026

BEFORE: Andrew J. King; William B. Hoffman; David M. Gormley, Judges

APPEARANCES: Kyle L. Stone, Stark County Prosecuting Attorney, Kameisha J. Johnson, Assistant Prosecuting Attorney, for Plaintiff-Appellee; William L. Kelley, Pro se, for Defendant-Appellant.

Hoffman, J.

{¶1} Defendant-appellant William Kelley appeals the April 13, 2026 Judgment Entry entered by the Stark County Court of Common Pleas, which denied his successive petition for post-conviction relief. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE¹

{¶2} On June 6, 2008, the Stark County Grand Jury indicted Appellant on one count of murder as a proximate result of felonious assault, in violation of R.C. 2903.02(B) and R.C.

¹A Statement of the Facts is not necessary to our disposition of this appeal.

2903.11 (Count One); one count of murder as a proximate result of child endangering, in violation of R.C. 2903.02(B) and R.C. 2919.22 (Count Two); one count of felonious assault, in violation of R.C. 2903.11 (Count Three); and one count of child endangering, in violation of R.C. 2919.22 (Count Four). The charges arose from the death of the one-year-old son of Appellant's then live-in girlfriend.

{¶3} Following a jury trial, Appellant was found guilty of Count Two, murder as a proximate result of child endangering, and Count Four, child endangering. The trial court sentenced Appellant to an aggregate term of incarceration of fifteen years to life. Appellant appealed to this Court, and we affirmed the judgment of conviction and sentence. *State v. Kelley*, 2009-Ohio-6441 (5th Dist.).

{¶4} On April 2, 2026, Appellant filed a successive petition for post-conviction relief pursuant to R.C. 2953.21 and R.C. 2953.23(A)(1). On April 10, 2026, the State filed a response to Appellant's petition, moving the court to dismiss the successive and untimely petition.

{¶5} Via Judgment Entry filed April 13, 2026, the trial court denied Appellant's petition for post-conviction relief and granted the State's motion to dismiss. The trial court found Appellant's successive petition was not timely filed. The trial court further found Appellant failed to demonstrate the applicability of any of the exceptions found in R.C. 2953.23(A), which would allow the court to consider his untimely petition. Finally, the trial court found the claims asserted by Appellant in his petition were barred by res judicata.

{¶6} It is from this judgment entry Appellant appeals, raising the following assignments of error:

I. THE TRIAL COURT ERRED AS A MATTER OF LAW BY DISMISSING APPELLANT WILLIAM L. KELLEY'S SUCCESSIVE PETITION FOR POSTCONVICTION RELIEF FOR LACK OF JURISDICTION UNDER R.C. 2953.23(A), WHERE THE PETITION ALLEGED AND DOCUMENTED THAT APPELLANT WAS UNAVOIDABLY PREVENTED FROM DISCOVERING CORROBORATING FACTS AND FURTHER ALLEGED THAT, BUT FOR CONSTITUTIONAL ERROR AT TRIAL, NO REASONABLE FACTFINDER COULD LAWFULLY HAVE CONVICTED HIM OF FELONY MURDER UNDER THE THEORY ACTUALLY SUBMITTED TO THE JURY.

II. THE TRIAL COURT ERRED BY REJECTING AS BARRED AND MERITLESS APPELLANT'S CLAIM THAT THE JURY INSTRUCTIONS AND VERDICT FORMS CONSTRUCTIVELY BROADENED COUNT TWO FROM FELONY MURDER PREDICATED ON R.C. 2919.22(B)(1) TO A NONQUALIFYING FAILURE-TO-ACT THEORY ASSOCIATED WITH R.C. 2919.22(A), IN - VIOLATION OF DUE PROCESS, CRIM.R. 7(D), R.C. 2945.75(A)(2), AND OHIO'S STATUTORY RULE THAT CRIMINAL LIABILITY MUST BE DEFINED BY STATUTE.

III. THE TRIAL COURT ERRED BY SUMMARILY DISMISSING THE SUCCESSIVE PETITION WITHOUT MEANINGFULLY ADDRESSING WHETHER THE PETITION AND ITS SUPPORTING

MATERIALS SATISFIED THE TWO JURISDICTIONAL REQUIREMENTS OF R.C. 2953.23(A)(1), AND BY ALTERNATIVELY REJECTING THE CLAIMS UNDER RES JUDICATA AND ON THE MERITS WITHOUT ADDRESSING THE SPECIFIC STATUTORY-PREDICATE AND VERDICT-FORM THEORY PRESENTED.

I, II, III

{¶7} We review a decision to grant or deny a petition for post-conviction relief under an abuse of discretion standard. *State v. Hatton*, 2022-Ohio-3991, ¶ 38, citing *State v. Gondor*, 2006-Ohio-6679, ¶¶ 51-52, 58. “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.

{¶8} 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.”

{¶9} In its April 13, 2026 Judgment Entry, the trial court found, “[p]ursuant to the Clerk of Court’s docket, the trial transcript was filed on or about April 14, 2009;” therefore, “[Appellant] was required to file his petition for post-conviction relief on or before April 14, 2010.” The trial court concluded, because Appellant filed his petition on April 2, 2026, the petition was not timely filed. We agree.

{¶10} R.C. 2953.23(A)(1)(a) allows a trial court to entertain an untimely-filed petition under certain circumstances:

(A) Whether a hearing is or is not held on a petition filed pursuant to section 2953.21 of the Revised Code, 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 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 or, if the claim challenges a sentence of death that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.

{¶11} A trial court has no jurisdiction to hear an untimely petition for post-conviction relief unless the movant meets the requirements set forth in R.C. § 2953.23(A). *State v. Robinson*, 2022-Ohio-3566, ¶ 12 (5th Dist.). Upon review of his petition, we, like the trial

court, find Appellant failed to demonstrate the applicability of any of the exceptions set forth in R.C. 2953.23(A).

{¶12} Because Appellant’s petition was untimely and successive pursuant to R.C. 2953.21, and because Appellant failed to satisfy the jurisdictional requirements of R.C. 2953.23, the trial court was without jurisdiction to entertain or review Appellant’s petition.

{¶13} Furthermore, we find Appellant’s claims are barred by res judicata. 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.” (Citation omitted.) *State v. Elmore*, 2005-Ohio-5940, ¶ 21 (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 that 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, 180 (1967). 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*, 77 Ohio St.3d 93 (1996).

{¶14} The arguments Appellant raised in his petition could have been raised on direct appeal; therefore, are barred by res judicata. Accordingly, we find the trial court did not abuse its discretion in denying Appellant’s petition.

{¶15} Appellant’s first, second, and third assignments of error are overruled.

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

{¶17} Costs to Appellant.

By: Hoffman, J.

King, P.J. and

Gormley, J. concur.