

# IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT  
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

ALEX C. BUGNO,

Defendant-Appellant.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 25 MA 0003**

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Criminal Appeal from the  
Court of Common Pleas of Mahoning County, Ohio  
Case No. 2018 CR 00425

**BEFORE:**

Cheryl L. Waite, Carol Ann Robb, Katelyn Dickey, Judges.

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**JUDGMENT:**

Affirmed.

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*Atty. Dave Yost*, Ohio Attorney General, and *Atty. Andrea K. Boyd*, Assistant Ohio Attorney General, for Plaintiff-Appellee

*Atty. Rhys B. Cartwright-Jones*, for Defendant-Appellant

Dated: June 18, 2025

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**WAITE, J.**

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{¶1} Appellant appeals a November 20, 2024 judgment entry of the Mahoning County Court of Common Pleas denying his untimely postconviction petition. Here, Appellant claims that he did not have the benefit of counsel to advise of the relevant deadlines, thus should be excused for his tardiness. He also takes issue with the court’s alternative rulings that his claims are barred by *res judicata* and that his “evidence” lacks credibility. Because the time deadlines within the postconviction petition statute are jurisdictional, Appellant admits his petition is untimely, and he does not fall within the two delineated exceptions to the timeliness requirement, his arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} The facts of the underlying appeal are not particularly relevant due to the grounds utilized by the trial court to deny Appellant’s postconviction petition. However, some basic facts will be addressed. Appellant owned a business called “Bugno Towing,” which has a physical location in Youngstown. Appellant called police to report that three vehicles on the property were damaged by what appeared to be a BB gun. Shortly thereafter, Appellant apparently learned the identity of the perpetrators; three male juveniles all known to Appellant.

{¶3} After Appellant contacted the father of one of the boys, the juvenile confessed to his father that Appellant had been paying him and two of his friends for oral sex. The two other boys eventually admitted that Appellant also paid them for oral sex. The shooting was the result of Appellant failing to pay the boys \$200 each after one incident where such acts occurred. While the boys’ statements to police were somewhat

inconsistent, they did inform police that at least some of these incidents were live-streamed to an audience. Several search warrants were executed which resulted in physical evidence.

{¶4} As a result of the investigation, on April 19, 2018, Appellant was indicted on: seven counts of pandering obscenity involving a minor, felonies of the fourth degree in violation of R.C. 2907.321(A)(5); fourteen counts of compelling prostitution, felonies of the third degree in violation of R.C. 2907.21(A)(1); fourteen counts of importuning, felonies of the fifth degree. On February 21, 2019, a superseding indictment added an additional charge of pandering to the earlier charges. After a trial, the jury convicted him on all counts of compelling prostitution and one count of pandering obscenity involving a minor.

{¶5} On January 31, 2020, Appellant filed a motion for a new trial which was overruled. On February 6, 2020, the trial court imposed an aggregate sentence of seventeen years of incarceration. Appellant was labeled a tier two sex offender. Appellant appealed his convictions, which were affirmed in *State v. Bugno*, 2022-Ohio-2008 (7th Dist.).

{¶6} Relevant to the instant appeal, on February 27, 2024, Appellant filed a combined Crim.R. 33 motion and postconviction petition. The state responded by filing a motion seeking dismissal or judgment on the pleadings. On November 20, 2024, the trial court sustained the state's motion. On November 20, 2024, the court found the petition untimely, as it was filed more than two and one-half years after the deadline to file a petition, and no exceptions to the timeliness requirement applied to Appellant. The court noted that even if it had jurisdiction to rule on the merits of the motion, the arguments

raised were barred by *res judicata* and no credible evidence *de hors* the records had been offered.

{¶7} Due to conflicts arising in the Mahoning County Prosecutor’s Office, the attorney general’s office was appointed to represent the state on appeal. On March 18, 2024, Appellant filed his brief late, explaining that while he received the 11(B) notice, he did not receive the actual entry. We accepted the brief instant. The day before the state’s response brief was due to be filed, it requested a twenty-day extension, which was granted. The state filed a response within the extension period.

#### Postconviction Petition

{¶8} A motion not specifically authorized under the Ohio Rules of Criminal Procedure is classified as a postconviction petition if “it is a motion that (1) was filed subsequent to [the defendant’s] direct appeal, (2) claimed a denial of constitutional rights, (3) sought to render the judgment void, and (4) asked for vacation of the judgment and sentence.” *State v. Hudson*, 2017-Ohio-4280, ¶ 9 (7th Dist.), quoting *State v. Reynolds*, 79 Ohio St.3d 158, 160 (1997). Appellant’s motion meets this criteria, as his motion was filed subsequent to his direct appeal, asserts a violation of a constitutional right, claims that his sentence is void, and asks for his sentence to be vacated.

{¶9} In order to successfully assert a postconviction petition, “the petitioner must demonstrate a denial or infringement of his rights in the proceedings resulting in his conviction sufficient to render the conviction void or voidable under the Ohio or United States Constitutions.” *State v. Agee*, 2016-Ohio-7183, ¶ 9 (7th Dist.), citing R.C. 2953.21(A)(1). The petitioner is not automatically entitled to a hearing. *State v. Cole*, 2 Ohio St.3d 112, 113 (1982). Pursuant to R.C. 2953.21(C), the petitioner bears the burden

of demonstrating “substantive grounds for relief” through the record or any supporting affidavits. However, as a postconviction petition does not provide a forum to relitigate issues that could have been raised on direct appeal, *res judicata* bars many claims. *Agee* at ¶ 10.

{¶10} The doctrine of *res judicata* “bars an individual from raising a defense or claiming a lack of due process that was or could have been raised at trial or on direct appeal.” *State v. Croom*, 2014-Ohio-5635, ¶ 7 (7th Dist.), citing *State v. Ishmail*, 67 Ohio St.2d 16, 18 (1981). However, where “an alleged constitutional error is supported by evidence that is de hors the record, *res judicata* will not bar the claim because it would have been impossible to fully litigate the claim on direct appeal.” *State v. Green*, 2003-Ohio-5142, ¶ 21 (7th Dist.), citing *State v. Smith*, 125 Ohio App.3d 342, 348 (12th Dist. 1997). To overcome the *res judicata* bar, the petitioner must demonstrate that the claim could not have been appealed based on the original trial record. *Agee* at ¶ 11, citing *State v. Combs*, 100 Ohio App.3d 90, 97 (1st Dist. 1994).

#### Timeliness

{¶11} R.C. 2953.21(A)(2) requires a petitioner to file a petition within one year after the trial transcripts are filed in the court of appeals. In relevant part, R.C. 2953.21(A)(2) provides that a postconviction petition:

[S]hall 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[.] . . . 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 three hundred sixty-five days after the expiration of the time for filing the appeal.

{¶12} Ohio law sets out a two-part exception to this rule if the petitioner can demonstrate that he or she meets the criteria found in R.C. 2953.23(A)(1)(a)-(b). Pursuant to R.C. 2953.23(A)(1)(a), the petitioner must either show that he:

[W]as unavoidably prevented from discovery of the facts upon which [he] must rely to present the claim for relief, or, . . . 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.

{¶13} This record reflects that Appellant filed trial transcripts with this Court on August 3, 2020. We note that the parties refer to filing on July 21, 2020, however, the time stamp on the transcripts containing the date August 3, 2020 and this Court's records also reflect the August date. Whichever is applied, Appellant filed his postconviction petition on February 27, 2024, three and one-half years after the statutory deadline. Pursuant to R.C. 2953.21(A)(2), this petition is untimely unless Appellant can show that his case falls within the exception provided by R.C. 2953.23(A)(1)(a)-(b). As will be later addressed, Appellant merely claims that he was unaware of the deadline for filing a timely petition. As this is not a recognized exception, the trial court correctly determined Appellant's petition was untimely and his untimeliness was not excused pursuant to R.C. 2953.23(A)(1)(a)-(b).

{¶14} The law governing such petitions clearly provides only two exceptions to the timeliness requirement: (1) a showing that Appellant was unavoidably prevented from discovering the facts on which the petition relies, or (2) that the United States Supreme Court created a new federal or state law that applies retroactively to Appellant’s case. Neither of these exceptions have been met.

#### ASSIGNMENT OF ERROR

The trial court erred in dismissing Bugno’s Rule 33 and Post-Conviction motion(s) without a hearing or a discovery period.

{¶15} Appellant advances three challenges to the trial court’s decision: (1) he had explained the delay in his filing, as no one advised him there was a deadline, (2) his issues could not have been raised on direct appeal, as they rely on evidence *de hors* the record, and (3) the court failed to specify the deficiency in evidence or convey why it found the evidence lacked credibility.

{¶16} It appears that Appellant attempts to evade the fatal effect of failing to file a timely petition, which strips the trial court of jurisdiction, by alleging that no one advised him of the relevant deadline. However, only two exceptions to the timeliness requirement exist, and Appellant does not even attempt to claim that either one applies, here. We note that Appellant was represented at the time he filed his petition and continues to be represented on appeal. He has provided no explanation as to why he could not have obtained counsel at any earlier date. Regardless, the trial court in this matter had no jurisdiction to entertain this untimely petition. The deadline is both statutorily defined and jurisdictional.

{¶17} Even if the petition was not barred as being untimely, his motion for a new trial would fail.

{¶18} Crim.R. 33 applies to a request for a new trial. In relevant part, that statute provides:

(A) Grounds. A new trial may be granted on motion of the defendant for any of the following causes affecting materially his substantial rights:

(1) Irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial;

(2) Misconduct of the jury, prosecuting attorney, or the witnesses for the state;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) That the verdict is contrary to law;

(5) Error of law occurring at the trial;

(6) When new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial. . .



{¶19} Appellant’s motion seeking a new trial was likewise untimely. We have recently addressed the timeliness of a motion for a new trial in *State v. Heath*, 2025-Ohio-996 (7th Dist.). The timeline for a motion for a new trial is described within Crim.R. 33(B). To the extent the motion was based on newly discovered evidence, “[m]otions for new trial on account of newly discovered evidence shall be filed within one hundred twenty days after the day upon which the verdict was rendered, or the decision of the court where trial by jury has been waived.” Crim.R. 33(B). Appellant’s motion was filed well after this deadline. If a motion for new trial is not timely, a motion seeking leave to file the late motion must first be sought. *Heath* at ¶ 48. “Leave must be granted before the merits are reached.” *Id.* at ¶ 47, citing *State v. Lordi*, 2002-Ohio-5517, ¶ 25 (7th Dist.). “After leave has been granted, under Ohio law, a ‘trial court holds the discretion to decide whether a Crim.R. 33 hearing should be held.’ ” *Id.*, citing *State v. Baer*, 2017-Ohio-7759, ¶ 12 (7th Dist.). Where a motion for leave is not filed, a trial court’s decision to dismiss the motion is proper. *Id.* Appellant did not file a motion for leave. Thus, court’s decision to dismiss the motion on this basis was also proper.

{¶20} Aside from these jurisdictional defects, in regard to Appellant’s arguments concerning *res judicata*, he claims that he could not assert the alleged *Brady* violation evidence because it was not known until after the conclusion of his trial. He claims he could not appeal this issue because an appellate court will not look to evidence not raised at trial. While this is true, it is possible to raise a *Brady* argument on appeal and it certainly would have been possible for Appellant to file a timely motion for new trial or a timely postconviction petition concerning this issue. Hence, Appellant could or should have raised each of his arguments earlier.

{¶21} Because the postconviction petition was untimely filed and did not fall within either of the two limited exceptions to the timeliness requirement, the arguments raised within the petition are barred by *res judicata*, and the motion for a new trial was also untimely filed, Appellant’s arguments are without merit and his sole assignment of error is overruled.

#### Conclusion

{¶22} Appellant argues that the trial court erroneously denied his postconviction petition. Because Appellant concedes that his petition was untimely and he offers no evidence to trigger the two limited exceptions to the timeliness requirement, his arguments are without merit and the judgment of the trial court is affirmed.

Robb, P.J. concurs.

Dickey, J. concurs.

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For the reasons stated in the Opinion rendered herein, Appellant's assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**