

[Cite as *State v. Shabazz*, 2023-Ohio-2775.]

[Vacated opinion. Please see 2024-Ohio-345.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 112140
	:	
v.	:	
	:	
JAMIL A. SHABAZZ,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: August 10, 2023

Civil Appeal from the Cuyahoga County Common Pleas Court
Case No. CR-07-495551-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Kristen Hatcher, Assistant Prosecuting
Attorney, *for appellee*.

Jamil A. Shabazz, *pro se*

ANITA LASTER MAYS, A.J.:

{¶ 1} Defendant-appellant Jamil A. Shabazz (“Shabazz”) appeals his convictions and asks this court to grant him a new trial. We affirm Shabazz’s convictions.

I. Procedural History

{¶ 2} On November 28, 2007, Shabazz was found guilty of one count of murder, an unclassified felony, in violation of R.C. 2903.02. A three-year firearm specification was attached to the charge. Shabazz was sentenced to a total of 18 years’ imprisonment.

{¶ 3} Shabazz, then referred to as Jamil Shabazz Abdul, appealed in *State v. Abdul*, 8th Dist. Cuyahoga No. 90789, 2009-Ohio-225 (“*Shabazz I*”), arguing that he “was not afforded effective assistance of counsel when defense counsel failed to inquire concerning prospective jurors bias towards member of the Muslim faith.” *Id.* at ¶ 1. He also argued that “the trial court erred in denying appellant’s motion for acquittal where evidence is not sufficient to support conviction.” *Id.* The court affirmed Shabazz’s convictions. *Id.* at ¶ 2, 35. The court found that the evidence “could convince a rational trier of fact that the State had proven beyond a reasonable doubt each element of the charge of murder.” *Id.* at ¶ 28. The court stated:

Two eye-witnesses, both members of the Mad Dog social organization, testified that they saw Shabazz Abdul exit the residence, re-enter after a few moments with a gun, and immediately shoot Rodgers in the head. Both Green and Saunders testified that Shabazz Abdul shot Rodgers at close range. In addition, Dr. Armstrong, a forensic

pathologist, confirmed that Rodgers was shot in the head from a distance of less than 12 inches.

Id. at ¶ 29.

{¶ 4} Later in 2009, Shabazz filed a petition for postconviction relief, claiming that the witnesses committed perjury. The trial court denied his petition, and Shabazz appealed in *State v. Shabazz*, 8th Dist. Cuyahoga No. 94738, 2010-Ohio-5789 (“*Shabazz II*”). In *Shabazz II*, Shabazz appealed the trial court’s denial of his petition for postconviction relief. *Id.* at ¶ 1. The court affirmed the trial court’s ruling. *Id.* The court stated that Shabazz’s claims are barred by res judicata. *Id.* at ¶ 6. Additionally, the court stated that Shabazz did not offer any evidence to support his claims. *Id.* at ¶ 7.

{¶ 5} In 2012, Shabazz filed a motion for a new trial, challenging his indictment, the amendment to his indictment, and the trial court’s jury instructions. The trial court denied his motion, and Shabazz appealed in *State v. Shabazz*, 8th Dist. Cuyahoga No. 98601, 2013-Ohio-267 (“*Shabazz III*”). The court affirmed the trial court’s denial. The court stated, “Although not raised in appellant’s motion for a new trial before the trial court, appellant now asserts that his motion is based on newly discovered evidence. However, none of appellant’s assignments of error pertain to newly discovered evidence.” *Id.* at ¶ 9.

{¶ 6} The court also stated that Shabazz’s claims were barred by res judicata, stating, “Each of appellant’s assignments of error pertain to matters that

were squarely within the record at the time of appellant’s direct appeal. Because they were not raised on direct appeal, appellant is barred by the doctrine of res judicata from raising them in this subsequent action.” *Id.* at ¶ 11.

{¶ 7} In 2012, Shabazz filed a pro se challenge to the imposition of postrelease control for the murder conviction, correctly noting that postrelease control is not applicable to murder, an unclassified felony. The trial court granted the motion on August 20, 2012, in a journal entry that stated, “Defendant’s sentencing entry is corrected to eliminate any reference to post-release control. However, defendant is not entitled to a de novo sentencing. *See State v. Lofton*, 4th Dist. [Pickaway] No. 11CA16, 2012-Ohio-2274.”

{¶ 8} In 2013, Shabazz filed a second motion for a new trial, claiming newly discovered evidence. The trial court denied the motion, and Shabazz filed an appeal in *State v. Shabazz*, 8th Dist. Cuyahoga No. 100623, 2014-Ohio-3142 (“*Shabazz IV*”) appealing the trial court’s decision denying his motion for leave asking for a new trial. *Id.* at ¶ 1. The court affirmed the trial court’s decision. *Id.* The court stated, “Accordingly, because the arguments Shabazz makes in this appeal were previously considered and rejected in his prior appeals, the doctrine of res judicata applies.” *Id.* at ¶ 13. “Notwithstanding the effect of res judicata, we further find that Shabazz failed to satisfy his burden of proving he was unavoidably prevented from discovering the purported new evidence, which would warrant the trial court to grant him leave to request a new trial.” *Id.* at ¶ 14.

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{¶ 9} In 2015, Shabazz filed a motion for leave to file a motion for a new trial. Shabazz did not present any new evidence to the trial court, and the trial court denied his motion. Shabazz filed an appeal in *State v. Abdul*, 8th Dist. Cuyahoga No. 103510, 2016-Ohio-3063 (“*Shabazz V*”). The court affirmed the trial court’s decision. *Id.* at ¶ 1. The court ruled that Shabazz’s assignments of error were barred by res judicata. *Id.* at ¶ 13.

{¶ 10} In 2019, Shabazz filed another petition for postconviction relief, and the trial court denied the petition. Shabazz filed an appeal in *State v. Abdul*, 8th Dist. Cuyahoga No. 108315, 2019-Ohio-5245 (“*Shabazz VI*”). The court affirmed the trial court’s decision, stating that Shabazz’s claims are barred by res judicata. *Id.* at ¶ 20.

{¶ 11} In 2022, Shabazz filed a fourth motion for leave to file a motion for a new trial. The trial court denied that motion, and Shabazz filed this appeal.

{¶ 12} This court summarized the facts of this case in *Shabazz I* at ¶ 5-22. Shabazz assigns two errors for our review:

1. Appellant was not afforded a new trial based on a *Brady* violation when he filed a Crim.R. 33(B) motion; and
2. The appellant’s substantial rights were violated when the prosecution abused their discretion and committed misconduct.

II. Res Judicata

{¶ 13} Shabazz’s arguments are identical to the ones he made in prior appeals. He claims that the state’s witness lied on the stand and the prosecution

withheld exculpatory evidence. However, Shabazz's arguments are barred by res judicata. "Res judicata is applicable to all postconviction proceedings." *Shabazz VI* at ¶ 14, citing *State v. Szefcyk*, 77 Ohio St. 3d 93, 95, 671 N.E.2d 233 (1996). "Under this doctrine, a defendant who was represented by counsel is barred from raising an issue in a petition for postconviction relief if the defendant raised or could have raised the issue at trial or on direct appeal." *Id.*

{¶ 14} Pursuant to R.C. 2953.21(C), a trial court may deny a petition for postconviction relief without holding an evidentiary hearing where the petition, the supporting affidavits, the documentary evidence, the files, and the records do not demonstrate that petitioner set forth sufficient operative facts to establish substantive grounds for relief. *State v. Calhoun*, 86 Ohio St.3d 279, 281, 1999-Ohio-102, 714 N.E.2d 905.

{¶ 15} "On appeal, the reviewing court applies the de novo standard to determine the issue of whether a successive petition for postconviction relief satisfies the jurisdictional requirement established in R.C. 2953.23." *Shabazz VI*, 8th Dist. Cuyahoga No. 108315, 2019-Ohio-5245, at ¶ 16, citing *State v. Apanovitch*, 155 Ohio St. 3d 358, 2018-Ohio-4744, 121 N.E.3d 351, at ¶ 24.

{¶ 16} In accordance with all of the foregoing, the requirements of R.C. 2953.23 were not satisfied because Shabazz's motion does not raise any constitutional error that could have affected the factfinder's judgment as to his guilt. R.C. 2953.23(A)(1)(b). Shabazz does not identify any new constitutional right

applicable to his case, and he was not “unavoidably prevented” from discovering the 2009 and 2012 actions raised herein. Therefore, his petition does not fall within the exceptions permitting a court to consider a late or successive petition under R.C. 2953.23(A)(1) and it could have been properly dismissed on that basis alone. *See, e.g., State v. Melhado*, 10th Dist. Franklin No. 05AP-272, 2006-Ohio-641, ¶ 18 (“A trial court lacks jurisdiction to hear an untimely filed petition for post-conviction relief if the two conditions of R.C. 2953.23(A)(1) are not satisfied.”). Additionally, these claims could have been brought during the prior appeals, so they are barred by res judicata.

{¶ 17} Therefore, Shabazz’s assignments of error are overruled.

{¶ 18} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANITA LASTER MAYS, ADMINISTRATIVE JUDGE

FRANK DANIEL CELEBREZZE, III, J., and
MICHELLE J. SHEEHAN, J., CONCUR