

[Cite as *State v. Jackson*, 2023-Ohio-3061.]

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 112326  
 v. :  
 :  
 MAURICE JACKSON, :  
 :  
 Defendant-Appellant. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: August 31, 2023**

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Civil Appeal from the Cuyahoga County Common Pleas Court  
Case No. CR-94-307962-B

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Frank Romeo Zeleznikar, Assistant Prosecuting Attorney, *for appellee*.

Maurice Jackson, *pro se*.

ANITA LASTER MAYS, A.J.:

{¶ 1} Defendant-appellant Maurice Jackson (“Jackson”) appeals the trial court’s failure to terminate an unlawful sentence and failure to afford him due

process rights during a 1995 probation revocation hearing. Jackson asks this court to vacate his sentence. We affirm the trial court's decision.

## **I. Facts and Procedural History**

{¶ 2} The relevant facts of this case are stated in Jackson's previous appeal, *State v. Jackson*, 8th Dist. Cuyahoga No. 92013, 2009-Ohio-3293 ("*Jackson I*") and are as follows:

Appellant, Maurice Jackson (appellant), pro se, appeals his August 12, 1994 plea of guilty to robbery, in violation of R.C. 2911.02. After reviewing the pertinent law and facts, we affirm. The following facts give rise to this appeal.

On March 29, 1994, the Cuyahoga County Grand jury charged appellant under a two-count indictment alleging aggravated robbery, in violation of R.C. 2911.01, and having a weapon while under disability, in violation of R.C. 2923.13, in Case No. CR-307962. Each offense carried a separate firearm specification.

On August 2, 1994, the State deleted the firearm specification from the first count of the indictment, deleted the word "firearm" from the body of the indictment, amended the aggravated robbery charge to robbery, and entered a nolle prosequi on the second count of the indictment in exchange for appellant's guilty plea and an agreed sentence.

On August 12, 1994, the trial court imposed a sentence of 8 to 15 years of incarceration, then suspended the sentence and imposed two years of probation, to begin after appellant completed serving time for his prior convictions in cases CR-299472, CR-302462, and CR-310068.

On June 19, 1997, appellant was released from incarceration and began serving the two years of probation imposed in the instant case. However, appellant soon violated his probation, thereby extending his sentence until June 21, 2001.

On April 18, 2000, while still on probation, appellant was indicted in a new case, CR-390243, this time alleging rape, kidnapping, and gross sexual imposition.

On September 20, 2000, appellant pled guilty to the amended charges of rape and kidnapping stemming from CR-390243, at which time he was also found to be in violation of his probation in CR-307962. At the hearing, the trial court modified appellant's original sentence in CR-307962 to 3 to 15 years, to be served consecutively with the 17-year sentence it imposed in CR-390243.

After his conviction, appellant filed several pro se motions in which he sought to withdraw his plea in this case and other cases.

On June 14, 2001, appellant filed a "motion to withdraw guilty plea and correct manifest injustice" in this case, Case No. 307962, which was denied by the trial court on July 17, 2001.

On July 16, 2001, appellant filed an "amended motion to withdraw guilty pleas" in the instant case and in Case No. 390243, which was denied on July 24, 2001.

On July 18, 2001, appellant filed an "amended motion to withdraw guilty pleas" in the instant case and in Case No. 390243, which was denied on August 10, 2008.

On August 16, 2005, appellant filed a motion for leave to file a delayed appeal in this court, which was denied on September 16, 2005.

On July 23, 2008, appellant filed a motion to withdraw guilty plea pursuant to Crim.R. 32.1, which was denied on August 1, 2008. This appeal followed.

*Id.* at ¶ 1-13.

{¶ 3} In *Jackson I*, Jackson assigned one error for the court to review:

Appellant's constitutional right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution and Article 1, Section 16 of the Ohio Constitution was violated when the

prosecutor amended the indictment without first resubmitting the matter to the grand jury.

*Id.* at ¶ 14.

{¶ 4} The court held that Jackson was barred from raising these claims, stating:

Under the doctrine of res judicata, a convicted defendant who was represented by counsel is barred from raising and litigating in any proceeding, except appeal from that judgment, any defense or claimed lack of due process that he raised or could have raised at trial. *State v. Szeftcyk*, 77 Ohio St.3d 93, 671 N.E.2d 233 (1996), citing *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967).

*Id.* at ¶ 19.

{¶ 5} On October 19, 2018, Jackson filed a motion to vacate his sentences, alleging that the court's sentencing entry is void. The trial court denied Jackson's motion, and he appealed in *State v. Jackson*, 8th Dist. Cuyahoga No. 107917, 2019-Ohio-3103 ("*Jackson II*"). Jackson assigned two errors for the court to review:

- I. The trial court entered into a mutual mistake of law by placing the appellant on probation to a nonprobational offense thus, [sic] violating R.C. 2951.02(F)(3).
- II. The trial court sentenced the appellant to a crime not charged in the indictment, thus violating Cr.R. 7(D)[.]

*Id.* at ¶ 1.

{¶ 6} The court in *Jackson II* held:

There is no reason why Jackson could not have raised his arguments in a direct appeal of his 1994 conviction and probation sentence. Accordingly, pursuant to the doctrine of res judicata, both of his assigned errors are overruled. *See also* R.C. 2953.21(A)(2)

(postconviction relief petitions “shall be filed no later than three hundred sixty-five days after the expiration of the time for filing the appeal”); R.C. 2953.23(A)(1) (“a court may not entertain a [postconviction relief] petition filed after the expiration of the period described in [R.C. 2953.21(A)(2)] unless \* \* \* the petitioner was unavoidably prevented from discovery of \* \* \* facts [and] but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted.”).

*Id.* at ¶ 6.

{¶ 7} On November 18, 2022, Jackson filed a motion to terminate his sentence. On December 19, 2022, the trial court denied his motion. Journal entry No. 135446598 (Dec. 19, 2022). Jackson filed this appeal, assigning two errors for our review:

1. The trial court failed to apply the statutory mandates of R.C. 2951.02(F)(3) of the Ohio Revised Code by placing appellant on probation to a non-probationable [sic] offense; and
2. The trial court failed to afford the appellant a full and fair probation revocation hearing as required by due process between the date of February 9 - March 15, 1995.

## II. Res Judicata

{¶ 8} Jackson’s first assignment of error is identical to the one he assigned in *Jackson III*. Additionally, Jackson is now for the first time raising his second assignment of error. Jackson’s claims are barred by res judicata. Res judicata is applicable to all postconviction proceedings. *Szefcyk*, 77 Ohio St.3d 93, 95, 671 N.E.2d 233. 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.*

{¶ 9} We find that Jackson has not demonstrated that he was unable to raise these arguments on direct appeal. *See also* R.C. 2953.21(A)(2) (postconviction relief petitions “shall be filed no later than three hundred sixty-five days after the expiration of the time for filing the appeal”).

“[A] court may not entertain a [postconviction relief] petition filed after the expiration of the period described in [R.C. 2953.21(A)(2)] unless \* \* \* the petitioner was unavoidably prevented from discovery of \* \* \* facts [and] but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted.”

R.C. 2953.23(A)(1).

{¶ 10} “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.” *State v. Abdul*, 8th Dist. Cuyahoga No. 108315, 2019-Ohio-5245, ¶ 16, citing *State v. Apanovitch*, 155 Ohio St. 3d 358, 2018-Ohio-4744, 121 N.E.3d 351, at ¶ 24.

{¶ 11} In accordance with all of the foregoing, the requirements of R.C. 2953.23 were not satisfied, because Jackson’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). Jackson does not identify any new constitutional right applicable to his case, and he was not “unavoidably prevented” from discovering

new evidence. 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.”).

**{¶ 12}** Therefore, Jackson’s assignments of error are overruled.

**{¶ 13}** 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.

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ANITA LASTER MAYS, ADMINISTRATIVE JUDGE

MARY EILEEN KILBANE, J., and  
EMANUELLA D. GROVES, J., CONCUR