

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 116104
ALBERT TOWNSEND, SR.,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 20, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-17-614508-A

Appearances:

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

Albert Townsend, Sr., *pro se*.

EMANUELLA D. GROVES, J.:

{¶ 1} Defendant-appellant Albert Townsend, Sr. (“Townsend”), *pro se*, appeals the trial court’s denial of his “motion to vacate set aside sentence” under R.C. 2953.21(A)(1)(a) and 2953.23(A). Townsend raises the following assignment of error for this court’s review:

The trial court committed reversible error when it denied [Townsend's] motion to vacate his judgment of conviction and sentence where the court acted without jurisdiction when it tried [Townsend] beyond the 180[-]day limitations period set forth in R.C. 2914.401, thus the resulting judgment was void ab initio.

We affirm the trial court's decision finding that Townsend's "motion" is a successive and untimely petition for postconviction relief barred by res judicata.

I. Facts and Procedural History

{¶ 2} The following facts and procedural history are limited to those relevant to the disposition of this appeal.

{¶ 3} In 2018, a jury found Townsend guilty of five counts of rape, two counts of kidnapping with sexual motivation specifications, and one count each of complicity to commit rape, attempted rape, and gross sexual imposition. The rape, complicity, attempted-rape, and gross-sexual-imposition convictions were accompanied by findings that Townsend was a sexually violent predator. The trial court imposed an aggregate prison sentence of 56 years to life and classified Townsend as a sexual predator.

{¶ 4} Townsend filed a direct appeal, raising eight assignments of error. This court affirmed his convictions for rape, kidnapping, complicity to commit rape, attempted rape, and gross sexual imposition but reversed his convictions on the sexually-violent-predator specifications associated with certain counts and remanded for resentencing. *State v. Townsend*, 2019-Ohio-1134 (8th Dist.) ("*Townsend I*"). *Townsend I* was affirmed by the Ohio Supreme Court. *State v. Townsend*, 2020-Ohio-5586.

{¶ 5} Townsend filed a pro se application to reopen *Townsend I*, claiming ineffective assistance of counsel based on his appellate attorney’s alleged failures to raise certain claims in his direct appeal. Through one proposed assignment of error, Townsend asserted that appellate counsel failed to challenge the trial court’s denial of his oral and written motions for a speedy trial pursuant to R.C. 2941.401.¹ This court denied Townsend’s application in *State v. Townsend*, 2021-Ohio-696 (8th Dist.).

{¶ 6} Townsend also filed numerous pro se postconviction motions, notices, and petitions at the trial-court level. These filings included petitions for postconviction relief in September and October 2023 and a “motion to vacate or set

¹ R.C. 2941.401 is a speedy-trial statute that applies to prisoners with pending charges for crimes separate from those for which they are currently imprisoned. The statute provides, in relevant part:

When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, the prisoner shall be brought to trial within one hundred eighty days after the prisoner causes to be delivered to the prosecuting attorney and the appropriate court in which the matter is pending, written notice of the place of the prisoner’s imprisonment and a request for a final disposition to be made of the matter, except that for good cause shown in open court, with the prisoner or the prisoner’s counsel present, the court may grant any necessary or reasonable continuance. . . . The written notice and request for final disposition shall be given or sent by the prisoner to the warden or superintendent having custody of the prisoner, who shall promptly forward it with the certificate to the appropriate prosecuting attorney and court by registered or certified mail, return receipt requested.

R.C. 2941.401 further establishes that “[i]f the action is not brought to trial within the time provided, subject to continuance allowed pursuant to this section, no court any longer has jurisdiction thereof, the indictment, information, or complaint is void, and the court shall enter an order dismissing the action with prejudice.”

aside sentence” in April 2024. In his contested petitions for postconviction relief, Townsend again argued that his right to a speedy trial was violated under R.C. 2941.401. Townsend’s “motion to vacate or set aside sentence” was also premised on this alleged speedy-trial violation.

{¶ 7} In his “motion,” Townsend asserted that he sent notice to the prison warden pursuant to R.C. 2941.401 and was not brought to trial within the statute’s 180-day mandate. Consequently, Townsend claimed that the trial court lacked “adequate and lawful subject matter jurisdiction” and demanded “immediate discharge from confinement” and “dismissal with prejudice.” In the “motion’s” caption, Townsend cited R.C. 2953.21(A)(1)(a) and 2953.23(A) — statutes governing petitions for postconviction relief. Townsend also requested a hearing under R.C. 2953.21 in his prayer for relief.

{¶ 8} The trial court dismissed Townsend’s petitions for postconviction relief in April 2024, finding that the petitions were untimely and sought “an oral hearing and other relief relative to exhibits and evidence and issues whose time for adjudication (such as expiration of speedy trial) has long since expired.” In January 2026, the trial court denied his “motion to vacate or set aside sentence.” Townsend filed a notice of appeal in February 2026, challenging the trial court’s denial of his “motion.”

II. Law and Analysis

{¶ 9} In his single assignment of error, Townsend argues that the trial court erred when it denied his “motion to vacate or set aside sentence.” Townsend claims

that the trial court lost jurisdiction when it failed to bring him to trial within R.C. 2941.401's 180-day deadline. Consequently, Townsend asserts that his convictions are void ab initio.

{¶ 10} The State counters that Townsend's "motion" is nothing more than an untimely and successive petition for postconviction relief that the trial court lacked jurisdiction to entertain. The State further asserts that Townsend has repeatedly raised speedy-trial claims and his "motion" is barred by res judicata.

{¶ 11} In his reply brief, Townsend reiterates the facts surrounding the alleged speedy-trial violation and cites case law applying R.C. 2941.401's jurisdictional parameters in the context of direct appeals. However, this is not Townsend's direct appeal. Nor — as emphasized by the State — is this the first time that speedy-trial claims under R.C. 2941.401 have been raised.

{¶ 12} As an initial matter, we note that Townsend does not dispute the State's contention that his "motion to vacate or set aside sentence" is a petition for postconviction relief in both substance and effect. Moreover, Townsend specifically cited R.C. 2953.21 and 2953.23 — statutes governing petitions for postconviction relief — in the "motion's" caption and prayer for relief. Thus, after reviewing Townsend's "motion to vacate or set aside sentence" and the record before us, we find that the "motion" is properly construed as a petition for postconviction relief. *State v. Reynolds*, 79 Ohio St.3d 158 (1997) (holding that a motion styled as a "motion to correct or vacate sentence" met the definition of a petition for postconviction relief pursuant to R.C. 2953.21(A)(1) because it was "(1) 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. Bridges*, 2023-Ohio-1048, ¶ 14 (8th Dist.) (construing a "motion to vacate a void judgment" as a petition for postconviction relief).

{¶ 13} Having interpreted Townsend's "motion" as petition for postconviction relief, we turn to the issues of subject-matter jurisdiction and res judicata. Whether a trial court possesses subject-matter jurisdiction to entertain an untimely and/or successive petition for postconviction relief is a question of law, which appellate courts review de novo. *State v. Scott*, 2024-Ohio-6211, ¶ 12 (8th Dist.), citing *State v. Apanovitch*, 2018-Ohio-4744, ¶ 24.

{¶ 14} "A petition for postconviction relief is a collateral civil attack of a criminal conviction." *Scott* at ¶ 7, citing *State v. Garrett*, 2024-Ohio-1367, ¶ 10-11 (8th Dist.). Since there is no constitutional right to a petition for postconviction relief, a defendant in such proceedings is entitled only to those rights expressly granted by the legislature. *Id.*, citing *id.* "That includes the right to have one's claim heard at all" *Apanovitch* at ¶ 36. Indeed, "[t]he most significant restriction on Ohio's statutory procedure for postconviction relief is that the doctrine of res judicata requires that the claim presented in support of the petition represent error supported by evidence outside the record generated by the direct criminal proceedings." *State v. Brown*, 2025-Ohio-274, ¶ 39 (8th Dist.), quoting *State v. Lenard*, 2020-Ohio-1502, ¶ 10 (8th Dist.), quoting *State v. Monroe*, 2005-Ohio-

5242, ¶ 9 (10th Dist.). Accordingly, any issues that were, or could have been, raised on direct appeal or in prior petitions for postconviction relief are barred by res judicata and are, therefore, precluded from review in any subsequent proceedings or successive petitions. *State v. Kennedy*, 2024-Ohio-66, ¶ 28-29 (8th Dist.).

{¶ 15} Pursuant to R.C. 2953.21(A)(1)(a), “[a]ny person who has been convicted of a criminal offense . . . and who claims that there was such a denial or infringement of the person’s rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States” may file a petition stating the grounds for relief relied upon and asking the sentencing court to vacate or set aside the judgment or sentence or to grant other appropriate relief. When a direct appeal of a conviction is filed, a petition under R.C. 2953.21(A)(1)(a) must be filed no later than 365 days after the date that the trial transcript is filed in the court of appeals. R.C. 2953.21(A)(2).

{¶ 16} “[A] court may not entertain a petition filed after the expiration of the period prescribed in [R.C. 2953.21(A)] or a second petition or successive petitions for similar relief on behalf of a petitioner unless [R.C. 2953.23(A)(1) or (2)] applies.” R.C. 2953.23(A). Relevant to this appeal, the R.C. 2953.23(A)(1) exception allows the trial court to consider an untimely or successive petition if both of the following conditions are met:

- (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 [R.C. 2953.21(A)(2)] 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.

{¶ 17} “[A] petitioner’s failure to satisfy R.C. 2953.23(A) deprives a trial court of jurisdiction to adjudicate the merits of an untimely or successive postconviction petition.” *Apanovitch*, 2018-Ohio-4744, at ¶ 36. A trial court has no duty to issue findings of fact and conclusions of law when it dismisses untimely or successive petitions for postconviction relief. *State ex rel. George v. Burnside*, 2008-Ohio-2702, ¶ 6.

{¶ 18} It is undisputed that Townsend’s petition for postconviction relief — captioned as a “motion to vacate or set aside sentence” — is both untimely and successive. Townsend’s April 2024 petition challenging his 2018 convictions was filed well beyond the 365-day deadline established by R.C. 2953.21(A)(2). Townsend also filed several previous petitions for postconviction relief, which were denied by the trial court. Nevertheless, Townsend does not (1) assert that the R.C. 2953.23(A)(1) exception applies in this case or (2) address the conditions required for the trial court to consider the untimely and successive petition for postconviction relief. Based the record before us, and absent any argument to the

contrary, we find that the trial court was deprived of jurisdiction to adjudicate the merits of Townsend’s “motion to vacate or set aside sentence.”

{¶ 19} Moreover, our review of the record reveals that Townsend could have — but did not — raise any issues related to R.C. 2941.401 in *Townsend I*, his direct appeal. Townsend subsequently claimed, on several occasions, that his right to a speedy trial was violated. However, those claims were repeatedly rejected at both the appellate and trial-court levels. Townsend also failed to appeal the trial court’s dismissal of his September and October 2023 petitions for postconviction relief, both of which asserted that his right to a speedy trial was violated under R.C. 2941.401. Therefore, Townsend’s speedy-trial claims under R.C. 2941.401 were barred by res judicata and precluded from review in a subsequent proceeding and successive petition. Accordingly, we overrule Townsend’s assignment of error.

{¶ 20} 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.

EMANUELLA D. GROVES, JUDGE

EILEEN T. GALLAGHER, P.J., and
EILEEN A. GALLAGHER, J., CONCUR