

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 116474
v.	:	
	:	
STEVEN HARRIS, SR.,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 22,2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-20-654918-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, Michael R. Wajda, Assistant Prosecuting
Attorney and Shaurya Pandya, Legal Intern, *for appellee*.

Steven Harris, Sr., *pro se*.

MICHAEL JOHN RYAN, J.:

{¶ 1} This cause came to be heard on the accelerated calendar pursuant to
App.R. 11.1 and Loc.App.R. 11.1. Pro se defendant-appellant Steven Harris, Sr.

appeals the trial court's decision to deny his petition for postconviction relief. For the reasons that follow, we affirm.

{¶ 2} Appellant was convicted in a trial by jury of four counts of drug possession in violation of R.C. 2925.11(A), one first-degree felony, two third-degree felonies, and one fifth-degree felony; possession of criminal tools in violation of R.C. 2923.14(A), a fifth-degree felony; having weapons while under disability in violation of R.C. 2923.13(A)(3), a third-degree felony; and various forfeiture specifications attendant to those counts.

{¶ 3} Of relevance to this appeal are Counts 4 and 6 of the indictment. Count 4 charged first-degree felony drug possession and alleged that appellant “did knowingly obtain, possess, or use a controlled substance or a controlled substance analog and the drug involved in the violation” that was either a “fentanyl-related compound, mixture, preparation, or substance or was a combination of a fentanyl-related compound and that exceeded 500 unit doses but was less than 1000 unit doses or exceeded 50 grams but was less than 100 grams.”

{¶ 4} Count 6 alleged third-degree felony drug possession stating that appellant

did knowingly obtain, possess, or use a controlled substance or a controlled substance analog and the drug involved in the violation is a compound, mixture, preparation, or substance included in Schedule I or II, to wit: 4-ANPP, a Schedule II drug and the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount.

{¶ 5} Upon conviction, appellant was sentenced to 13 years in prison.

{¶ 6} Appellant filed a direct appeal. This court vacated the convictions on Counts 4 and 6, finding that Counts 4 and 6 were allied offenses of similar import because the State aggregated the drugs charged in Count 6 into the total quantity of drugs that created the first-degree felony offense as charged in Count 4. *State v. Harris*, 2024-Ohio-5807, ¶ 4 (8th Dist.). The State conceded the error based on *State v. Pendleton*, 2020-Ohio-6833, which held that “the imposition of two punishments for the same, singular quantity of drugs violated the Double Jeopardy protections of the Ohio and United States Constitutions.” *Harris* at ¶ 18, quoting *Pendleton* at ¶ 20.

{¶ 7} This court also reversed the consecutive nature of appellant’s sentences on all counts. *Id.* The case was remanded for resentencing. On remand, the State elected to proceed on Count 4, first-degree felony drug possession. The weight of the drugs from Counts 4 and 6 were combined, and appellant was again sentenced to a total of 13 years in prison. He did not appeal his resentencing.

{¶ 8} Appellant subsequently filed a petition for postconviction relief arguing that the State could not aggregate the weights for his now-merged (Counts 4 and 6) drug offense. The State filed a brief in opposition arguing that appellant’s petition was untimely and his claims were barred by res judicata. The trial court denied the petition.

{¶ 9} Appellant raises two assignments of error for our review.

I. The trial court abuses its discretion where it denies the postconviction petition prematurely without considering the allotted pleadings to this civil case.

II. Appellant filed a postconviction petition/application pursuant to R.C. 2953.21 and 2953.23 stating that there is an infringement to his constitutional right that had the error not been committed no reasonable trier of facts could have found him guilty to his conviction for a 1st degree felony on count 4 of the conviction.

{¶ 10} In his first assignment of error, appellant argues that the trial court erred when it denied his postconviction-relief petition before he was able to file his reply brief.

{¶ 11} R.C. 2953.21 governs postconviction relief and contains no provision for filing reply briefs. *State v. Shabazz*, 2010-Ohio-5789, ¶ 12 (8th Dist.). Therefore, the trial court did not err in deciding appellant's postconviction-relief petition based solely on his petition and the State's response in opposition. *Id.*

{¶ 12} The first assignment of error is overruled.

{¶ 13} In his second assignment of error, appellant contends that the trial court erred in denying his postconviction-relief petition.

{¶ 14} Postconviction relief is a civil collateral attack on a criminal judgment. *State v. Curry*, 2019-Ohio-5338, ¶ 12 (8th Dist.). "Postconviction review is not a constitutional right but, rather, is a narrow remedy that affords a petitioner no rights beyond those granted by statute." *Id.*, citing *State v. Calhoun*, 86 Ohio St.3d 279, 281-282 (1999). R.C. 2953.21 allows convicted criminal defendants to file a petition requesting the court vacate its judgment on the grounds that there was a denial or infringement on his or her rights rendering the judgment void or voidable. R.C. 2953.21(A)(1)(a)(i). That petition must be filed no later than 365 days after the transcript being filed in his or her direct appeal, or if no appeal is filed, no later than

365 days “after the expiration of the time for filing the appeal.”
R.C. 2953.21(A)(2)(a).

{¶ 15} A convicted defendant may file a petition for postconviction relief after the 365-day deadline; however, if he or she meets the requirements of R.C. 2953.23(A). Under R.C. 2953.23(A)(1), a petitioner meets the timeliness exception if 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.

{¶ 16} Appellant’s petition was filed past the statutory time period. Thus, we consider whether he meets one of the timeliness exceptions. Appellant contends that he was unavoidably prevented from discovery of facts “because the State conceded the constitutional error on appeal to which the Court remedied the imposition of two punishments for the same singular quantity of drugs” and that no reasonable trier of fact would have found him guilty of first-degree felony drug possession as alleged in Count 4 of the indictment.

{¶ 17} Appellant argues that the weights of the drugs were unlawfully added together to make the crime of drug possession a first-degree felony. The State counters that appellant's claim is barred by res judicata because he raised the same issue, successfully, on direct appeal.

{¶ 18} Res judicata prevents defendants from raising errors in postconviction-relief petitions that were or should have been raised in the defendant's direct appeal. *State v. Williams*, 2005-Ohio-6020, ¶ 8 (8th Dist.). We agree with the State that appellant's claim is barred by res judicata, albeit for a different reason than set forth by the State. The issue on direct appeal was whether appellant could be sentenced on two drug possession counts for the same, singular quantity of drugs or if they should merge under double jeopardy protections. The issue raised in his petition is whether appellant can be sentenced on one drug possession count by combining the weights of the drugs when the two counts were already merged for the purpose of sentencing.

{¶ 19} Had appellant wanted to raise this issue, he could have done so through a direct appeal of the sentence handed down at his resentencing hearing. Appellant did not; therefore, his claim is barred by res judicata. Moreover, appellant did not provide a transcript of his resentencing hearing or an alternative allowed under the appellate rules. Therefore, we do not know if appellant raised his claim at the trial-court level. See *State v. Walker*, 2009-Ohio-1503, ¶ 7 (7th Dist.), citing *State v. Davis*, 2008-Ohio-2, ¶ 377 (A defendant's failure to raise issue during the sentencing hearing gives the trial court no basis upon which to make a proper ruling,

and constitutes a waiver of the issue.). Moreover, in the absence of a transcript, a reviewing court will presume regularity of trial court proceedings. *State v. Alexander*, 2017-Ohio-5588, ¶ 7 (8th Dist.).

{¶ 20} Considering the above, the second assignment of error is overruled.

{¶ 21} 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 be sent to said 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.

MICHAEL JOHN RYAN, JUDGE

MICHELLE J. SHEEHAN, A.J., and
DEENA R. CALABRESE, J., CONCUR