

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 30446

Appellee

v.

DANTE D. GORDON

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR-1998-08-1896

DECISION AND JOURNAL ENTRY

Dated: August 9, 2023

CARR, Judge.

{¶1} Appellant, Dante Gordon, appeals, pro se, the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} In 1998, Gordan entered a guilty plea to murder along with an attendant firearm specification. The trial court sentenced Gordon to a prison term of 15 years to life on the murder charge and a three-year prison term on the firearm specification. The trial court ordered that those sentences were to be served consecutively.

{¶3} In the years that have passed since Gordan’s sentencing, he has filed a litany of post-judgment motions in the trial court challenging his conviction and sentence. The trial court has consistently denied these motions. On the occasions where Gordon has taken the steps necessary to perfect an appeal from those orders, this Court has affirmed the trial court’s judgments on appeal. *See, e.g., State v. Gordon*, 9th Dist. Summit No. 25370, 2010-Ohio-6308 (affirming

the trial court's denial of Gordon's motion to declare his sentence void); *State v. Gordon*, 9th Dist. Summit No. 25911, 2012-Ohio-902 (affirming the trial court's denial of Gordon's motions to vacate his plea and to dismiss the indictment); *State v. Gordon*, 9th Dist. Summit No. 29009, 2018-Ohio-4311 (affirming the trial court's dismissal of Gordon's successive petition for post-conviction relief).

{¶4} On February 1, 2022, Gordon filed another series of motions in the trial court, including a petition for post-conviction relief and a motion to withdraw his guilty plea. The State moved to dismiss the petition for post-conviction relief. The State also filed a brief in opposition to the motion to withdraw.

{¶5} On August 29, 2022, the trial court issued a journal entry denying Gordon the requested relief. With respect to the petition for post-conviction relief, the trial court determined that the petition was untimely and successive and that Gordon had not demonstrated that he was unavoidably prevented from discovering the evidence upon which the petition was based. The trial court further determined that the issues raised in Gordon's motion to withdraw were barred under the doctrine of res judicata.

{¶6} On appeal, Gordon raises two assignments of error.

II.

{¶7} Although Gordon raises only two assignments of error on appeal, we decline to quote them here due to their extensive length. In his first assignment of error, Gordon argues that the trial court erred in dismissing his petition for post-conviction relief on the basis that he failed to demonstrate that he was unavoidably prevented from discovering the evidence upon which the petition relied. In his second assignment of error, Gordon argues that the trial court erred in

denying his motion to withdraw his guilty plea on the basis that he failed to demonstrate that this case involved a manifest injustice.

Untimely and Successive Petition for Post-Conviction Relief

{¶8} “R.C. 2953.23(A) allows a prisoner to file only one postconviction petition in most situations.” *State v. Apanovitch*, 155 Ohio St.3d 358, 2018-Ohio-4744, ¶ 21. Gordon filed his most recent petition for post-conviction relief more than 22 years after the date of his conviction.

{¶9} “Petitions for post-conviction relief that are untimely or successive are governed by R.C. 2953.23.” *State v. Archey*, 9th Dist. Summit No. 29254, 2019-Ohio-2303, ¶ 6. A trial court is prohibited from entertaining an untimely petition for post-conviction relief unless the petitioner can demonstrate that (1) either 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[;]” and (2) the petitioner demonstrates that but for the constitutional error, no reasonable fact-finder would have found the petitioner guilty. R.C. 2953.23(A)(1)(a)-(b); *State v. Porter*, 9th Dist. Summit No. 26169, 2013-Ohio-1163, ¶ 8.

{¶10} In this case, the trial court did not err in dismissing Gordon’s untimely and successive petition on the basis that Gordon failed to demonstrate that he was unavoidably prevented from discovering the facts upon which the petition was based. Gordon’s core allegation below was that a number of government officials conspired to falsify public records in order to prevent Gordon from knowing whether an arrest warrant was filed in his case. In support of his petition, Gordon pointed to a series of documents filed in the Akron Municipal Court and the

Summit County Court of Common Pleas, as well as an August 2021 letter from the Summit County Clerk of Courts indicating that his case was brought via direct indictment and that there was no arrest warrant in the case file. All of the evidence that Gordon relied on in support of his petition was public record. Moreover, Gordon did not present any evidence demonstrating his claim that public records were either falsified or in any way manipulated. Under these circumstances, Gordon’s challenge to the trial court’s dismissal of his petition for post-conviction relief is without merit.

Motion to Withdraw Plea

{¶11} Crim.R. 32.1 provides that “[a] motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.”

{¶12} A manifest injustice has been defined as a “clear or openly unjust act.” *State ex rel. Schneider v. Kreiner*, 83 Ohio St.3d 203, 208 (1998). A post-sentence withdrawal of a plea is only permissible under extraordinary cases where a defendant has established that a fundamental flaw in the proceedings caused a miscarriage of justice or resulted in proceedings that did not comport with the constitutional demands of due process. *State v. Griffin*, 9th Dist. Summit No. 24179, 2009-Ohio-1212, ¶ 10.

{¶13} This Court has recognized that a successive motion to withdraw a guilty plea filed pursuant to Crim.R. 32.1 is subject to the doctrine of res judicata. *State v. Miller*, 9th Dist. Lorain No. 03CA008259, 2003-Ohio-6580, ¶ 9. “Under the doctrine of res judicata, any issue that was or should have been litigated in a prior action between the parties may not be relitigated.” *State v. Zhao*, 9th Dist. Lorain No. 03CA008386, 2004-Ohio-3245, ¶ 7, citing *State v. Meek*, 9th Dist.

Lorain No. 03CA008315, 2004-Ohio-1981, ¶ 9. An offender may not raise issues in a successive motion to withdraw a guilty plea that could have been raised in the initial motion. *Zhao* at ¶ 7-8.

{¶14} A review of the record reveals that the trial court properly denied Gordon’s successive motion to withdraw his plea. In support of his motion, Gordon argued that he was the subject of an invalid arrest and detention because law enforcement officers never obtained a valid arrest warrant. Gordon also raised an ineffective assistance claim on the basis that trial counsel failed to vigorously defend Gordon by declining to explore whether law enforcement had a valid arrest warrant. Gordon’s claims in support of his recent motion to withdraw were based on evidence that was apparent on the face of the record. On appeal, Gordon has not explained why he could not have raised these issues at a prior point in the proceedings. *See id.* at ¶ 8 (“The doctrine of res judicata bars appellant’s current challenge of the court’s denial of his motion to withdraw his guilty plea because the issues he raises now could have been fully litigated on direct appeal [] or raised in his initial motion to withdraw his guilty plea pursuant to Crim.R. 32.1.”). Accordingly, the trial court properly concluded that Gordon’s claims were barred under the doctrine of res judicata.

{¶15} Gordon’s first and second assignments of error are overruled.

III.

{¶16} Gordon’s assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

SUTTON, P. J.
STEVENSON, J.
CONCUR.

APPEARANCES:

DANTE D. GORDON, pro se, Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and JACQUENETTE S. CORGAN, Assistant Prosecuting Attorney, for Appellee.