

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

STATE OF OHIO,	:	
	:	Case No. 19CA3895
Plaintiff-Appellee,	:	
	:	
v.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
TODD M. WILLIAMS,	:	
	:	
Defendant-Appellant.	:	RELEASED: 11/2/2020

APPEARANCES:

Todd M. Williams, Pro Se Appellant.

Shane A. Tieman, Scioto County Prosecuting Attorney, and Jay S. Willis, Scioto County Assistant Prosecuting Attorney, for Appellee.

Wilkin, J.

{¶1} This is an appeal from a Scioto County Court of Common Pleas judgment entry denying Appellant, Todd M. Williams’ petition for post-conviction relief. On appeal, Appellant asserts that the trial court abused its discretion by denying his “motion to vacate and set aside conviction” without holding a hearing. Based upon our review of the law and the record, we overrule Appellant’s assignment of error and affirm the judgment entry denying his petition.

{¶2} On April 17, 2013, the State charged Appellant with (1) robbery in violation of R.C. 2911.02(A)(2), (2) kidnapping in violation of R.C. 2905.01(A)(2), (3) kidnapping in violation of R.C. 2905.01(A)(2), (4) abduction in violation of R.C. 2905.02(A)(2), and (5), abduction in violation of R.C. 2905.02(A)(2). Appellant

was represented by attorney Michael Mearan. At his arraignment, Appellant pleaded not guilty to all five charges.

{¶3} On October 18, 2013, Appellant entered a guilty plea of robbery, a felony of the second degree, and the trial court imposed an agreed seven-year aggregate prison sentence. Appellant never filed a direct appeal. However, on July 31, 2019, more than five years after his guilty plea, Appellant filed a petition for post-conviction relief. The trial court, without holding a hearing, issued an order denying Appellant’s petition, finding that it was “not well taken.” It is from this judgment that Appellant appeals, asserting a single assignment of error.

ASSIGNMENT OF ERROR

THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING HIS MOTION TO VACATE AND SET ASIDE CONVICTION

{¶4} Appellant asserts that his attorney, Michael Mearan, was ineffective in his representation and Judge William Marshall was corrupt, “rendering [his] conviction a manifest injustice requiring an evidentiary hearing.” He further argues, “[t]his Court should consider the argument well taken and vacate [his] convictions.” In support, Appellant relies on a May 15, 2019, Cincinnati Enquirer article discussing allegations that now-retired Judge William Marshall was part of the sex trafficking operation run by attorney Michael Mearan. The article also stated that family members alleged that Judge William Marshall had gone to work intoxicated.

{¶5} The State argues that Appellant could have raised the issues of ineffective assistance of counsel and the Judge’s corruption on direct appeal, so his petition was barred by res judicata.

{¶6} The State also argues that Appellant did not file his petition within the deadline set out in R.C. 2953.21, which means that Appellant was required to satisfy the two requirements set out in R.C. 2953.21 in order for the trial court to consider his petition. The State further argues that because the Appellant failed to comply with those two requirements the trial court lacked jurisdiction to even consider the petition, so it should have been dismissed.

Law

1. Standard of Review

{¶7} “Generally, we review decisions granting or denying a postconviction relief petition filed pursuant to R.C. 2953.21 under an abuse of discretion standard.” *State v. Ervin*, 4th Dist. Highland No. 19CA7, 2019-Ohio-4708, ¶ 12, citing *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 58. An abuse of discretion implies that the court's attitude is unreasonable, arbitrary or unconscionable.” *Bowen v. Britton*, 84 Ohio App. 3d 473, 478, 616 N.E.2d 1217 (4th Dist. 1993), citing *State v. Montgomery*, 61 Ohio St.3d 410, 413, 575 N.E.2d 167 (1991).

2. Post-Conviction Relief

{¶8} Pursuant to R.C. 2953.21 and R.C. 2953.23, a defendant may file a petition seeking relief from a criminal conviction if he or she can show “there was such a denial or infringement of [his or her] rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States.”

State v. Smith, 4th Dist. Washington No. 06CA65, 2007-Ohio-4730, ¶ 8, quoting R.C. 2953.21(A)(1)(a).

{¶9} A petition for post-conviction relief does not automatically entitle a petitioner to an evidentiary hearing. *State v. McKnight*, 4th Dist. Vinton No. 07CA665, 2008-Ohio-2435, ¶ 17, citing *State v. Calhoun*, 86 Ohio St.3d 279, 282, 1999-Ohio-102, 714 N.E.2d 905. Before granting a hearing on the petition, “the trial court must first determine whether substantive grounds for relief exist.” *Id.*, citing former R.C. 2953.21(C), now (D). In making that determination, a “court shall consider” any “supporting affidavits, documentary evidence,” as well as “all files and records pertaining to the proceedings against the petitioner * * *.” *State v. Garrett*, 4th Dist. Gallia No. 13CA13, 2014-Ohio-3462, ¶ 6, quoting former R.C. 2953.21(C), now (D). If a court finds no substantive grounds for petition exist, it may dismiss the petition without a hearing. See *State v. Martin*, 4th Dist. Scioto No. 06CA3110, 2007-Ohio-4258, ¶ 27.

{¶10} There is a time limitation for filing the petition, which requires a petitioner to file “no later than three hundred and sixty-five days after the expiration of the time for filing the appeal.” R.C. 2953.21(A)(2).

[A] trial court *may not entertain* an untimely petition for postconviction relief *unless* (1) the petitioner can show he was “unavoidably prevented” from discovering facts relied upon in the petition and (2) the petitioner shows by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted * * *. (Emphasis added.)

State v. Sheets, 4th Dist. Athens No. 03CA24, 2005-Ohio-803, ¶ 18, quoting R.C. 2953.23(A).

“[T]hese twin showings are jurisdictional requirements that must be met before a trial court may consider [an] otherwise-untimely petition for post-conviction relief.” *State v. Mackey*, 2nd Dist. Clark No. 2017-CA-43, 2018-Ohio-516, ¶ 7, citing *State v. Baker*, 2nd Dist. Montgomery No. 27596, 2017-Ohio-8602, ¶ 12 (footnote omitted), see also *Martin*, 4th Dist. Scioto No. 06CA3110, 2007-Ohio-4258, ¶ 17, *State v. James*, 10th Dist. Franklin No. 11AP-246, 2011-Ohio-6457, ¶ 14, *State v. Sargent*, 12th Dist. Butler No. CA2001-11-270, 2002-Ohio-3597, ¶ 6.

Analysis

{¶11} Appellant was sentenced on October 18, 2013, and he did not appeal his conviction. Therefore, his time to file a direct appeal of his conviction expired on Monday November 17, 2013. Appellant did not file his petition until more than five years after the expiration of appeal time, which means it was not timely filed under the limitation period provided in former R.C. 2953.21(A)(2), which permitted a petition to be filed one-hundred-and-eighty days after the petitioner’s direct-appeal time expired (Former R.C. 2953.21(A)(2), 2010 Ohio Laws File 30 (Sub. S.B. 77)), or the current version, which permits a petition to be filed three-hundred-and-sixty-five days after the petitioner’s direct-appeal time expired. Therefore, the trial court could not consider Appellant’s petition on its merits, unless Appellant was able to demonstrate that (1) he was “unavoidably prevented from discovering the facts relied upon in his petition, and (2) prove “by clear and convincing evidence that, but for constitutional error at trial, no

reasonable factfinder would have found [him] guilty of the offense of which [he] was convicted.” R.C. 2953.23(A).

{¶12} With regard to the first requirement, the article cited by Appellant is dated May 15, 2019, almost six years after his conviction. However, the article stated that Judge William Marshall was arrested for driving under the influence sometime in 2013, and the allegations suggested that the sex trafficking had been occurring for some time. Appellant also failed to allege in his petition that he was unavoidably prevented from discovering Judge William Marshall’s drinking problem or the allegations of sex trafficking prior to the deadline for filing his petition. Therefore, we find that Appellant has not alleged, let alone demonstrated, that he was unavoidably prevented from discovering this information prior to his deadline for filing his petition.

{¶13} With regard to the second requirement, “[n]ewspaper articles are generally inadmissible as evidence of the facts stated in them.” *In re Waste Techs. Indus.*, 132 Ohio App. 3d 145, 155, 724 N.E.2d 819 (10th Dist.), citing *State v. Self*, 112 Ohio App.3d 688, 694-695, 679 N.E.2d 1173 (12th Dist.). The article cited by Appellant discusses only “allegations” made against attorney Michael Mearan and Judge William Marshall, not established facts. Even assuming for the sake of argument the sex trafficking allegations are true, although reprehensible and criminal in nature, they are not inherently prejudicial to Appellant’s plea. The sex trafficking allegations asserted that Judge William Marshall and attorney Michael Mearan conspired to lure women into working as prostitutes by offering them lenient sentences. Those circumstances did not exist

in Appellant's case, which involved robbery, kidnapping, and abduction. Finally, there is simply no specific allegation, let alone any evidence, that Judge William Marshall had been drinking on any of the days he was involved with Appellant's case. Therefore, we find that Appellant has not reached the threshold of clear and convincing evidence that there is a constitutional infirmity regarding his plea bargain.

{¶14} Because Appellant failed to satisfy either of the threshold requirements in R.C. 2953.23(A) that would have permitted him to file an untimely petition, the trial court lacked jurisdiction to "consider" Appellant's petition. *Martin*, 4th Dist. Scioto No. 06CA3110, 2007-Ohio-4258, ¶ 17.

Conclusion

{¶15} The trial court erred by denying, rather than dismissing, Appellant's petition. However, our standard of review for the granting or denying of a petition for post-conviction relief is an abuse of discretion, which "implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Britton*, 84 Ohio App. 3d 473, 478, 616 N.E.2d 1217 (4th Dist. 1993). Because ultimately Appellant was properly denied relief, we do not find that the trial court's denial of Appellant's petition was unreasonable, arbitrary, or unconscionable. Accordingly, we affirm the trial court's judgment denying Appellant's petition.

JUDGMENT AFFIRMED

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County 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.

Smith, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.