

[Cite as *State v. Price*, 2004-Ohio-961.]

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

Appellee

v.

VINCENT PRICE

Appellant

C.A. No. 03CA0046

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 99-CR-0185

DECISION AND JOURNAL ENTRY

Dated: March 3, 2004

This cause was heard upon the record in the trial court. Each error assigned
has been reviewed and the following disposition is made:

BATCHELDER, Judge.

{¶1} Appellant, Vincent Price, appeals from the judgment in the Wayne County Court of Common Pleas that denied his motion to file a delayed petition for post-conviction relief. We affirm.

I.

{¶2} On October 28, 1999, the Wayne County Grand Jury indicted Mr. Price on six separate counts: (1) aggravated murder, in violation of R.C. 2903.01(B); (2) murder, in violation of R.C. 2903.02(B); (3) kidnapping, in violation of R.C. 2905.01(A)(2) or (3); (4) aggravated robbery, in violation of R.C. 2911.01(A); (5) aggravated burglary, in violation of R.C. 2911.11(A); and (6) grand theft, in violation of R.C. 2913.02. Each charge carried a firearm specification. A jury trial followed. The jury found Mr. Price not guilty of complicity to commit aggravated murder, but it found him guilty of complicity to commit murder, complicity to commit kidnapping, complicity to commit aggravated robbery, complicity to commit aggravated burglary, and complicity to commit theft. Additionally, the jury found him guilty of the firearm specifications. The trial court sentenced him accordingly. Mr. Price perfected a timely appeal with this Court, and this Court affirmed his convictions. *State v. Price* (Jan. 24, 2001), 9th Dist. No. 99CA0027.

{¶3} Thereafter, on February 12, 2003, Mr. Price moved to file a “delayed post-conviction petition.” The State responded to this motion. Mr. Price then moved for summary judgment. The trial court denied Mr. Price’s delayed petition for post-conviction relief without a hearing, finding it to be untimely filed and

lacking compelling reasons for waiver of the time limitations outlined under R.C. 2953.23(A). Mr. Price timely appeals and raises one assignment of error for review.

II.

Assignment of Error

“TRIAL COURT ERRED TO THE PREJUDICE OF [MR. PRICE] BY ABUSE OF DISCRETION IN DENIAL OF LEAVE TO FILE PETITION FOR POST CONVICTION RELIEF PURSUANT TO [R.C.] 2953.23(A).”

{¶4} In his sole assignment of error, Mr. Price contends that the trial court abused its discretion when it denied his delayed petition for post-conviction relief without holding an evidentiary hearing, as Mr. Price believes that he has satisfied the requirements of R.C. 2953.23(A). Mr. Price’s contention lacks merit.

{¶5} An appellate court reviews a trial court’s decision not to conduct an evidentiary hearing in post-conviction matters under an abuse of discretion standard. *State ex rel. Richard v. Seidner*, 76 Ohio St.3d 149, 151, 1996-Ohio-54; *State v. Houser*, 9th Dist. No. 21555, 2003-Ohio-6811, at ¶12, citing *State v. Watson* (1998), 126 Ohio App.3d 316, 324. An abuse of discretion is more than an error of judgment, but instead demonstrates “perversity of will, passion, prejudice, partiality, or moral delinquency.” *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621, 1993-Ohio-122. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *Id.*

{¶6} R.C. 2953.21 sets forth the statutory framework governing post-conviction relief. Specifically, this statute provides defendants with a mechanism to petition the trial court for an evidentiary hearing and request relief on the basis that their convictions are void or voidable on state or federal constitutional grounds. R.C. 2953.21. A petition for post-conviction relief must specify the bases for the relief requested, and request the trial court to either vacate or set aside the judgment or sentence imposed. R.C. 2953.21(A)(1). The petition may ask the court to grant other appropriate relief. *Id.*

{¶7} Although defendants may petition for post-conviction relief, they are still required to abide by certain time requirements for filing such a petition, as outlined in R.C. 2953.21(A)(2). R.C. 2953.21(A)(2) provides:

“A petition under division (A)(1) of this section shall be filed *no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication* or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the supreme court. If no appeal is taken, the petition shall be filed no later than one hundred eighty days after the expiration of the time for filing the appeal.” (Emphasis added.)

{¶8} The record reveals that Mr. Price’s trial transcript was filed on June 26, 2000. As such, for Mr. Price’s petition to be deemed timely filed, it must have been filed no later than one hundred eighty days after June 26, 2000. Mr. Price moved to file his “delayed post-conviction petition” on February 12, 2003, well beyond the statutory time period.

{¶9} As Mr. Price filed his petition outside the prescribed time limitations, the trial court lacked jurisdiction absent Mr. Price demonstrating he met the requirements of R.C. 2953.23(A). See *State v. Hurst* (Jan. 10, 2000), 5th Dist. No. 1999CA00171. See, also, *State v. Mullen*, 4th Dist. No. 00CA24, 2001-Ohio-2566; *State v. Harris* (Feb. 9, 2001), 2nd Dist. No. 18525; *State v. Smith* (Feb. 17, 2000), 8th Dist. No. 75793. The trial court may consider a petition for post-conviction relief after the deadline if the defendant demonstrates:

“(1) Either of the following ***:

“(a) 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.

“(b) 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 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[.]” R.C. 2953.23(A).

{¶10} In the present case, Mr. Price contends that his convictions should be vacated or set aside because they stemmed from prosecutorial misconduct. Mr. Price further contends that he “was unavoidably prevented from discover[ing] the facts” to support his prosecutorial misconduct assertion because he allegedly “requested and obtained a separation order so that [he] would be kept separated

from Ralph Blackwell and Octavious Patrick[.]”¹ However, there is nothing in the record to support Mr. Price’s allegation that he had been separated from Blackwell and Patrick other than his blanket assertion. Furthermore, Mr. Price has not presented any other basis to demonstrate that he “was unavoidably prevented from discover[ing] the facts” upon which he must rely to present his claim for relief. As such, Mr. Price has failed to demonstrate the jurisdictional requirements outlined in R.C. 2953.23(A). Moreover, Mr. Price does not argue that his petition is based upon a new federal or state right that has been recognized by the United States Supreme Court. See R.C. 2953.23(A)(1)(b). As the trial court lacked jurisdiction to consider Mr. Price’s petition, it was not required to hold an evidentiary hearing. See *State v. Furcron* (Feb. 17, 1999), 9th Dist. No. 98CA007089; *State v. Flowers* (Nov. 12, 1998), 9th Dist. No. 2842-M; *State v. Hanks* (June 25, 1998), 10th Dist. No. 98AP-70. Consequently, we hold that the trial court did not abuse its discretion in denying Mr. Price’s motion for a “delayed post-conviction petition” without a hearing. Accordingly, Mr. Price’s sole assignment of error is overruled.

III.

{¶11} Mr. Price’s assignment of error is overruled. The judgment of the Wayne County Court of Common Pleas is affirmed.

Judgment affirmed.

¹ Ralph Blackwell and Octavious Patrick participated in the crimes with Mr. Price that gave rise to his convictions and subsequent delayed petition for post-conviction relief.

WILLIAM G. BATCHELDER
FOR THE COURT

WHITMORE, P.J.
SLABY, J.
CONCUR

APPEARANCES:

VINCENT PRICE, Pro Se, #386-777, Lorain Correctional Institution, 2075 South Avon-Belden Road, Grafton, Ohio 44044, Appellant.

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