

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 19AP-106 (C.P.C. No. 98CR-2661)
Redan R. Norman,	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on September 30, 2019

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**On brief:** *Ron O'Brien*, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

**On brief:** *Redan R. Norman*, pro se.

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APPEAL from the Franklin County Court of Common Pleas

BEATTY BLUNT, J.

{¶ 1} Defendant-appellant, Redan R. Norman, appeals the January 27, 2019 decision by the Franklin County Court of Common Pleas denying both his motion to vacate a void judgment and sentence as well as his motion to strike the State's response to his motion to vacate. We affirm the trial court's decision.

**I. FACTS AND PROCEDURAL HISTORY**

{¶ 2} In 1999, Norman was found guilty by a jury and sentenced to a term of life imprisonment without parole for the kidnapping and aggravated murder of Kaleb Williams. (Indictment and Jgmt. Entry at Fiche 31566, Frame B18.) Norman's conviction was affirmed by this court on December 23, 1999, see *State v. Norman*, 10th Dist. No. 99AP-398 (Dec. 23, 1999), and the Supreme Court of Ohio subsequently declined jurisdiction over his direct appeal. *State v. Norman*, 88 Ohio St.3d 1496 (2000).

{¶ 3} This court set forth the facts of Norman's crime as follows:

[O]n May 3, 1998, the victim, Kaleb Williams, and Arlynda Heard visited appellant and his girlfriend, Amy Gill, at appellant's home. Heard testified that, earlier that day, she had met with Williams to talk about their son. Heard and Williams stopped at Innis Park to talk and then rode around for a while prior to arriving at appellant's house. Heard testified that appellant was a good friend of hers, "like my best friend." Heard testified that, when they got to the house, appellant and Gill were there. She stated that they introduced Kaleb to appellant and they were all "just sitting around drinking." (Tr. 32.)

At some point in the evening, Williams lost his temper with Heard, grabbed her by the neck and started choking her. After Williams let go, Heard asked appellant to ask Williams to stop choking her. Appellant intervened, and things returned to normal. About twenty minutes later, Donald Anderson, a friend of appellant's, knocked at the door. Heard answered the door and Anderson and Williams immediately exchanged words. According to Heard, appellant then went upstairs and came back downstairs with a gun. Heard testified that she and Williams were sitting on the couch and, when she saw the gun, she got up. She testified that appellant then pointed the gun and stated, "you see this, mother fucker" and then fired the gun. (Tr. 36.) Williams fell to his knees on the floor. Heard stated that Gill was in the kitchen at the time of the shooting.

About a minute later, appellant and Anderson picked up Williams and carried him outside to appellant's car which appellant had pulled around to the carport. As Anderson and appellant were carrying Williams out, Heard said she noticed that Williams's stomach was still moving, and that it appeared to her that he was still breathing and alive. After appellant and Anderson left with Williams in the trunk of the car, Gill began trying to clean up blood stains on the carpet, in the kitchen, and on the back patio. Heard telephoned her husband to come and pick her up, but remained in the house until appellant and Williams returned. As she left, she picked up a spent .22 shell casing and a live .22 round and took them with her.

Heard would not tell her husband what was wrong, although she was crying. After Heard arrived home, she telephoned the police and told them that she had witnessed a murder.

*Norman* at \*2-4. Subsequent investigation as a result of Heard's call led to the discovery of Kaleb Williams' body, which was discovered at a remote location in Fairfield County. *Id.* at

\*6.

{¶ 4} In the two decades since he was convicted, Norman has filed numerous motions and petitions challenging his conviction and has made at least seven different attempts to directly challenge his sentence. This appeal is from a motion to vacate judgment and sentence he filed on July 18, 2018 and a motion to strike he filed on August 23, 2018, which were both denied by the trial court on January 27, 2019.

{¶ 5} In his motion to vacate, Norman argued for the first time that the trial court lacked subject-matter jurisdiction and that his conviction is void, primarily because venue was improper in Franklin County. The State filed a memorandum in response to Norman's motion to vacate on August 13, 2018 and observed that while the death certificate lists Fairfield County as the place of Kaleb Williams' death, the evidence at trial demonstrated that Norman shot Williams in Franklin County, and that Norman and his accomplice Donald Anderson loaded Williams into the trunk of Norman's car and drove away. The State therefore argued that "a motion filed nearly 20 years after trial is not the proper procedural vehicle to raise a challenge to venue." (Aug. 13, 2018 Memo Contra Def.'s Mot. to Vacate at 2.)

{¶ 6} Norman filed a motion to strike the State's memorandum in response. Although the argument in support of the motion is not completely clear, Norman did assert that the State's Memorandum failed to comply with Loc.R. 21.01 of the Court of Common Pleas of Franklin County, General Division. The State's memorandum was filed 26 days after Norman's motion to vacate was filed, and Loc.R. 21.01 states in part that "[t]he opposing counsel or a party shall serve any answer brief on or before the 14th day after the date of service as set forth on the certificate of service attached to the served copy of the motion." Norman therefore argued, at least in part, that the State's memorandum should be stricken as untimely.

{¶ 7} On January 27, 2019, the trial court denied both of Norman's motions without a formal hearing. As to Norman's motion to strike, the trial court concluded that "the delay in ordinary mail service does not justify striking the State's Memo Contra." (Jan. 27, 2019 Entry/Order at 1.) Regarding Norman's motion to vacate, the trial court noted that "[a]t the underlying trial, there was evidence establishing that the victim may have died in Franklin County" and further observed that "Defendant shot the victim in Franklin County." (Entry at 10.) The trial court also observed that Norman "was [also]

charged for killing the victim during the course of a kidnapping, a kidnapping which occurred in Franklin County." (Entry at 10.)

{¶ 8} This timely appeal followed.

## **II. ASSIGNMENTS OF ERROR**

{¶ 9} Although he does not state them clearly in his merit brief, Norman raises two assignments of error. First, he argues that the trial court "abused [its] discretion and created a plain error, when [it] dismissed [appellant's] motion to strike without a[n] evidentiary hearing." (Appellant's Brief at 7.) Second, he asserts that the trial court "abused [its] discretion when it committed plain error in [its] ruling," apparently referring to the trial court's decision to deny his motion to vacate on the merits. (Appellant's Brief at 8.)

## **III. STANDARD OF REVIEW**

{¶ 10} R.C. 2953.21(A)(1)(a) authorizes a person who has been convicted of a criminal offense "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 \* \* \* [to] file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief."

{¶ 11} While Norman's motion to vacate a void judgment of conviction and sentence does not specifically mention R.C. 2953.21, it does assert the same claims and seek the precise relief as a petition filed pursuant to that section. The Supreme Court of Ohio has held that a trial court "may recast irregular motions into whatever category necessary to identify and establish the criteria by which the motion should be judged." *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, ¶ 12, citing *State v. Reynolds*, 79 Ohio St.3d 158 (1997). In *Reynolds*, the Supreme Court concluded that a motion styled as "Motion to Correct or Vacate Sentence" was properly treated as a postconviction petition, because it "(1) was 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." *Reynolds* at 160. Norman's motion to vacate also satisfies these same criteria, and therefore it is properly treated as a R.C. 2953.21 petition for postconviction relief.

{¶ 12} "A petition for postconviction relief is a collateral civil attack on a criminal judgment, not an appeal of the judgment." *State v. Sidibeh*, 10th Dist. No. 12AP-498, 2013-

Ohio-2309, ¶ 8, citing *State v. Steffen*, 70 Ohio St.3d 399, 410 (1994). Postconviction relief "is a means to reach constitutional issues which would otherwise be impossible to reach because the evidence supporting those issues is not contained in the record." *Id.*, quoting *State v. Murphy*, 10th Dist. No. 00AP-233 (Dec. 26, 2000).

{¶ 13} R.C. 2953.21(A)(2) provides that to be timely a postconviction petition must be filed "no later than three hundred sixty-five 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." Under R.C. 2953.23(A)(1), a trial court may not entertain an untimely postconviction petition unless the petitioner demonstrates either (1) he was unavoidably prevented from discovering the facts necessary for the claim for relief, or (2) the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation. R.C. 2953.23(A)(1)(a). And even if the petitioner can satisfy one of those two conditions, in order to obtain relief the petitioner must also demonstrate that but for constitutional error at trial, no reasonable finder of fact would have found him guilty. R.C. 2953.23(A)(1)(b).

{¶ 14} A petitioner is not automatically entitled to an evidentiary hearing on a postconviction petition. *Sidibeh* at ¶ 13, citing *State v. Jackson*, 64 Ohio St.2d 107, 110-13 (1980). To warrant an evidentiary hearing, the petitioner bears the initial burden of providing evidence demonstrating a cognizable claim of constitutional error. R.C. 2953.21(D); *State v. Hessler*, 10th Dist. No. 01AP-1011, 2002-Ohio-3321, ¶ 24. The trial court may deny a postconviction petition without an evidentiary hearing "if the petition, supporting affidavits, documentary evidence, and trial record do not demonstrate sufficient operative facts to establish substantive grounds for relief." *Sidibeh* at ¶ 13, citing *State v. Calhoun*, 86 Ohio St.3d 279 (1999), paragraph two of the syllabus.

{¶ 15} This court reviews a trial court's decision denying a postconviction petition without a hearing for an abuse of discretion. *See, e.g., State v. Howard*, 10th Dist. No. 15AP-161, 2016-Ohio-504, ¶ 15-21 (citing and quoting cases). An abuse of discretion connotes a decision that is unreasonable, arbitrary, or unconscionable. *Id.*, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). Further, "a reviewing court should not overrule the trial court's finding on a petition for postconviction relief that is supported by

competent and credible evidence." *Sidibeh* at ¶ 7, quoting *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, ¶ 58.

{¶ 16} Similarly, a trial court's decision to grant or deny a motion to strike is within its sound discretion and will not be overturned on appeal absent an abuse of discretion. *KeyBank Natl. Assn. v. Columbus Campus, LLC*, 10th Dist. No. 11AP-920, 2013-Ohio-1243, ¶ 68, citing *Douglass v. Salem Community Hosp.*, 153 Ohio App.3d 350, 2003-Ohio-4006, ¶ 20 (7th Dist.) and *Early v. The Toledo Blade*, 130 Ohio App.3d 302, 318 (6th Dist.1998).

#### **IV. LAW AND ANALYSIS**

{¶ 17} In his first assigned error, Norman contends that the trial court erred by denying his motion to strike and permitting the State to file and serve its response to his motion to vacate several days late. By local rule, the State's response was due to be filed by August 1, 2018, but it was not actually filed until August 13, and Norman did not receive his copy until August 17. The trial court concluded that the delay did not justify striking the State's memorandum, and Norman has not provided any basis for this court to conclude he was actually prejudiced by this minor delay. Under these circumstances, we cannot say that the trial court's decision to deny his Motion to Strike is an abuse of discretion, and we therefore overrule this assignment of error.

{¶ 18} As for Norman's second assignment of error, he argues that the trial court erred by denying his motion to vacate. We begin by observing that the motion was not filed until over 18 years after Norman's direct appeal became final, and is in substance a delayed postconviction petition. *Reynolds* at syllabus. As a result, the motion must meet the requirements of R.C. 2953.23(A)(1). *See, e.g., State v. Teitelbaum*, 10th Dist. No. 19AP-137, 2019-Ohio-3175, ¶ 12, citing *State v. Apanovitch*, 155 Ohio St.3d, 2018-Ohio-4744, ¶ 21-22. But those requirements cannot be satisfied, because Norman's motion does not raise any constitutional error that could have affected the factfinder's judgment as to his guilt. *Compare* R.C. 2953.23(A)(1)(b). Moreover, he does not identify any new constitutional right applicable to his case, and he was certainly not "unavoidably prevented" from discovering that Williams' death occurred in Fairfield County—that fact is undisputed and was well known at the time of trial. *Compare* R.C. 2953.23(A)(1)(a). Therefore, his motion does not fall within the exceptions permitting a court to consider a late or successive petition under R.C. 2953.23(A)(1), and it could have been properly dismissed on that basis

alone. *See, e.g., State v. Melhado*, 10th Dist. No. 05AP-272, 2006-Ohio-641, ¶ 18 ("A trial court lacks jurisdiction to hear an untimely filed petition for post-conviction relief if the two conditions of R.C. 2953.23(A)(1) are not satisfied.").

{¶ 19} Although Norman's motion to vacate contends that the trial court lacked subject-matter jurisdiction to enter a judgment of conviction, his real complaint is his belief that the case was improperly venued in Franklin County. Article I, Section 10 of the Ohio Constitution establishes the right of an accused defendant to "a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed," and R.C. 2901.12 requires that "[t]he trial of a criminal case in this state shall be held in a court having jurisdiction of the subject matter, and \* \* \* in the territory of which the offense or any element of the offense was committed." In *State v. Hampton*, 134 Ohio St.3d 447, 2012-Ohio-5688, the Supreme Court held that a trial court properly granted a judgment of acquittal when the State failed to prove venue beyond a reasonable doubt.

{¶ 20} But venue is subject to traditional rules of forfeiture and waiver: "[a]lthough it is not a material element of the offense charged, venue is a fact which must be proved in criminal prosecutions *unless it is waived by the defendant*." (Emphasis added.) *State v. Headley*, 6 Ohio St.3d 475, 477 (1983), citing *State v. Draggo*, 65 Ohio St.2d 88, 90 (1981). Moreover, since it has been presented in postconviction petition, Norman's venue claim is subject to the limits of res judicata. "Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment of conviction, or on an appeal from that judgment." (Emphasis omitted.) *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus. "Res judicata also implicitly bars a petitioner from 're-packaging' evidence or issues which either were, or could have been, raised in the context of the petitioner's trial or direct appeal." *Hessler* at ¶ 27.

{¶ 21} Applying these principles, we conclude that Norman has waived his venue claim by failing to raise it at trial or on direct appeal. *See Headley* at 477. And given that his venue claim could have been raised at trial or on direct appeal, it is also barred by res judicata. *Hessler* at ¶ 27. Moreover, Norman's venue claim fails on its own merits. Under

R.C. 2901.12(H) venue was proper in Franklin County, since "[w]hen an offender, as part of a course of criminal conduct, commits offenses in different jurisdictions, the offender may be tried for all of those offenses in any jurisdiction in which one of those offenses or any element of one of those offenses occurred." *See State v. Armengau*, 10th Dist. No. 14AP-679, 2017-Ohio-4452, ¶ 111. Under R.C. 2901.12(H)(1), the fact that "[t]he offenses involved the same victim" is prima facie evidence of a course of criminal conduct. The kidnapping and homicide of Williams was undoubtedly a single course of conduct, and even though Kaleb Williams' body was discovered in Fairfield County, the evidence clearly demonstrated that Norman fired the shot that killed Williams in Franklin County.

{¶ 22} For all these reasons, the trial court's decision denying Norman's motion to vacate without a hearing was not an abuse of discretion. We overrule his assignments of error, and affirm the judgment of the trial court.

*Judgment affirmed.*

SADLER and BRUNNER, JJ., concur.

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