

[Cite as *State v. Richard*, 2002-Ohio-6223.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 81283

STATE OF OHIO : ACCELERATED DOCKET  
: :  
Plaintiff-appellee : :  
vs. : JOURNAL ENTRY  
: and  
DONALD RICHARD : OPINION  
: :  
Defendant-appellant : :  
:

DATE OF ANNOUNCEMENT  
OF DECISION : NOVEMBER 14, 2002

CHARACTER OF PROCEEDING : Civil appeal from  
: Court of Common Pleas  
: Case No. CR-221735

JUDGMENT : AFFIRMED

DATE OF JOURNALIZATION :

APPEARANCES:

For plaintiff-appellee WILLIAM D. MASON  
Cuyahoga County Prosecutor  
RENEE L. SNOW, Assistant  
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For defendant-appellant: DONALD RICHARD, Pro-se  
#A358-099  
Southern Ohio Correctional Facility  
Post Office Box #45699  
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KENNETH A. ROCCO, P. J.:

{¶1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the record from the lower court, the briefs and arguments of counsel. The purpose of an accelerated docket is to allow an appellate court to render a brief and conclusory decision. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158.

{¶2} Appellant-petitioner Donald Richard, Jr. appeals from the common pleas court order that denied his current petition for postconviction relief filed<sup>1</sup> in this case.<sup>2</sup> Appellant argues he provided adequate evidence to demonstrate his compliance with R.C. 2953.23. This court disagrees.

{¶3} The record reflects appellant originally was indicted in this case in 1987 on one count of aggravated murder with a gun specification. The indictment alleged appellant had committed the crime with prior calculation and design.

{¶4} Although appellant received the services of assigned counsel, he was unhappy with their efforts on his behalf. Nevertheless, appellant eventually entered into a plea agreement

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<sup>1</sup>Since appellant also filed numerous "motions for relief from judgment," it is difficult to ascertain the specific amount of petitions filed pursuant solely to R.C.2953.21. See, *State v. Hill* (1998), 129 Ohio App.3d 658.

<sup>2</sup>Appellant has other cases in which he also has filed more than one petition or motion for relief.

whereby in exchange for the state's amendment of the indictment to a charge of involuntary manslaughter without the specification, appellant would enter a guilty plea. The trial court accepted appellant's plea. Following a presentence investigation and report, the trial court sentenced appellant to a term of five to twenty-five years.

{¶5} Soon thereafter, appellant began his campaign to have his conviction overturned. Appellant's delayed appeal to this court in App. No. 57664 was unsuccessful; therefore, in 1990 he filed his first petition for postconviction relief. The trial court denied appellant's petition, a decision this court affirmed in App. No. 62645. Appellant's additional efforts via Civ.R. 60(B) and Crim.R. 32.1 proved similarly unsuccessful.

{¶6} Appellant, however, eventually filed his latest petition for postconviction relief in March 2001. Invoking R.C. 2953.23, appellant claimed he had found a newspaper article from 1987 that proved he was innocent of the crime of manslaughter. The state opposed appellant's petition with a motion to dismiss it. Appellant's current appeal is from the trial court order that denied appellant's most recent petition.

{¶7} Appellant's assignments of error are overruled on the basis of *State v. Richard* (Apr. 4, 2002), Cuyahoga App. No. 79964. The trial court lacks jurisdiction to consider an untimely

petition unless both requirements of R.C. 2953.23 are met. *State v. Corbin* (Dec.30, 1999), Cuyahoga App. No. 75627.

{¶8} Appellant's newspaper article did not constitute competent evidence, and appellant's affidavit did not provide any reasons for his failure timely to obtain the "facts" upon which he relied to present his latest claim for relief. *State v. Richard*, supra. Moreover, since appellant entered a guilty plea to the offense, he could never demonstrate he met the requirement set forth in R.C. 2953.23(A)(2). *State v. Miller* (Apr. 6, 2000), Cuyahoga App. No. 75762.

{¶9} The trial court's order, accordingly, is affirmed.

KENNETH A. ROCCO  
PRESIDING JUDGE

TIMOTHY E. McMONAGLE, A.J. and  
COLLEEN CONWAY COONEY, J. CONCUR