

[Cite as *State v. Harris*, 2021-Ohio-1820.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 110068
 v. :
 :
 WALTER HARRIS, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: May 27, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-15-592778-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Tasha L. Forchione, Assistant Prosecuting
Attorney, *for appellee*.

Walter Harris, *pro se*.

LISA B. FORBES, J.:

{¶ 1} Walter Harris (“Harris”), acting *pro se*, appeals the trial court’s
journal entry denying as moot his postconviction motion to dismiss indictment.

After reviewing the facts of the case and pertinent law, we affirm the trial court's judgment.

I. Facts and Procedural History

{¶ 2} On October 28, 2016, a jury found Harris guilty of 28 counts relating to the sexual abuse of his girlfriend's minor daughter. The court sentenced Harris to 11 years in prison. This court affirmed Harris's convictions on direct appeal. *State v. Harris*, 2018-Ohio-578,107 N.E.3d 658 (8th Dist.) ("*Harris I*"). On August 17, 2020, Harris filed a pro se "motion to dismiss the indictment for violation speedy trial requirement." On October 8, 2020, the trial court denied Harris's motion as moot. It is from this journal entry that Harris appeals raising three assignments of error.

I. The trial court erred by awarding appellant's jail-time credit for an unrelated offense.

II. Appellant's Federal and State constitutional right to a speedy trial and due process were violated due to the trial court tolling appellant's speedy trial time.

III. Appellant's constitution right to the fifth and fourteenth amendment violated by the trial court detention appellant without due process.

II. Standard of Review, Postconviction Relief, and Res Judicata

{¶ 3} "A vaguely titled motion, including a motion to correct or vacate a judgment or sentence, may be construed as a petition for postconviction relief under R.C. 2953.21(A)(1) * * *." *State v. Rackley*, 8th Dist. Cuyahoga No. 102962, 2015-Ohio-4504, ¶ 9. "A postconviction proceeding is not an appeal of a criminal conviction, but, rather, a collateral civil attack on the judgment. Postconviction

review is a narrow remedy, since res judicata bars any claim that was or could have been raised at trial or on direct appeal.” (Citation omitted). *State v. Steffen*, 70 Ohio St.3d 399, 410, 639 N.E.2d 67 (1994).

{¶ 4} “[A] trial court’s decision granting or denying a postconviction petition filed pursuant to R.C. 2953.21 should be upheld absent an abuse of discretion * * *.” *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 58.

{¶ 5} The Ohio Supreme Court has held that “where a criminal defendant, subsequent to his or her direct appeal, files a motion seeking vacation or correction of his or her sentence [or conviction] on the basis that his or her constitutional rights have been violated, such a motion is a petition for postconviction relief as defined in R.C. 2953.21.” *State v. Reynolds*, 79 Ohio St.3d 158, 160, 679 N.E.2d 1131 (1997). A motion meets the definition for postconviction relief if 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.” *Id.* Pursuant to R.C. 2953.21(A)(2), a defendant must file a postconviction-relief petition within 365 days from the filing of the trial transcripts in his or her direct appeal.

{¶ 6} Additionally, it is longstanding Ohio law that “res judicata [is] a proper basis upon which to dismiss without hearing an R.C. 2953.21 petition.” *State v. Cole*, 2 Ohio St.3d 112, 113, 443 N.E.2d 169 (1982).

Under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant 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, 180, 226 N.E.2d 104 (1967).

III. Law and Analysis

{¶ 7} In the instant case, Harris filed his motion for postconviction relief more than one year after the trial transcripts were filed in his direct appeal. In *Harris I*, the trial transcripts were filed on January 30, 2017. Harris filed the postconviction motion at issue in the case at hand on August 17, 2020.

{¶ 8} Pursuant to R.C. 2953.23, “a court may not entertain a petition filed after the expiration of the period prescribed in [R.C. 2953.21] unless division (A)(1) or (2) of this section applies * * *.” R.C. 2953.23(A)(1) governs being unavoidably prevented from discovering new evidence and R.C. 2953.23(A)(2) governs actual innocence as a result of DNA testing. Neither situation applies to Harris.

{¶ 9} Accordingly, we conclude that the trial court was without jurisdiction to hear Harris’s postconviction-relief motion because he did not file it in a timely manner.

{¶ 10} Furthermore, Harris’s arguments on appeal are barred by the doctrine of res judicata. As to his first assignment of error, the trial court issued journal entries awarding Harris jail-time credit on November 9, 2016, and January 6, 2017. Harris did not challenge these journal entries in his direct appeal. *See State v. DeMarco*, 8th Dist. Cuyahoga No. 96605, 2011-Ohio-5187, ¶ 8 (“Here it

is clear that the trial court's January 13, 2011 sentencing entry sets forth that appellant would receive no jail-time credit. That issue was final and appealable at that time. Because appellant did not file an appeal from that order, the instant argument is barred by res judicata.”).

{¶ 11} As to his second assignment of error, Harris raised the speedy-trial issue in his direct appeal, this court found no violation of Harris's speedy-trial rights, and this issue is now barred by the doctrine of res judicata. *See Harris I*, 2018-Ohio-578, 107 N.E.3d 658, at ¶ 69 (“Having found no merit to Harris's constitutional and statutory speedy-trial challenges, his fifth assignment of error is overruled.”).

{¶ 12} As to his third assignment of error, Harris's argument that his pretrial detention violated his constitutional rights is also barred by res judicata. Harris filed two motions for release under bond, which the trial court denied on November 2, 2015, and February 25, 2016, respectively. Harris did not argue in these motions that his pretrial detention violated his constitutional rights. Furthermore, Harris did not appeal the denial of these motions and he did not raise this argument in his direct appeal. *See State v. Hicks*, 8th Dist. Cuyahoga No. 99119, 2013-Ohio-1904, ¶ 14 (“If an alleged constitutional error could have been raised and fully litigated on direct appeal, the issue is res judicata and may not be litigated in a postconviction proceeding.”).

{¶ 13} Harris's motion for postconviction relief was untimely under R.C. 2953.21, and the challenges raised in the motion are barred by res judicata.

Therefore, the court did not abuse its discretion by denying Harris's motion as moot, and Harris's assignments of error are overruled.

{¶ 14} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue of out of this court directing the 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.

LISA B. FORBES, JUDGE

LARRY A. JONES, SR., P.J., and
MICHELLE J. SHEEHAN, J., CONCUR