

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2009-T-0004
ROOSEVELT D. GRAY,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 93 CR 112.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Roosevelt D. Gray, pro se, P.I.D. 280-007, Mansfield Correctional Institution, P.O. Box 788, Mansfield, OH 44901-0788 (Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} Appellant, Roosevelt D. Gray, appeals from a judgment of the Trumbull County Court of Common Pleas, denying his pro se petition for postconviction relief, pursuant to R.C. 2953.21 and 2953.23. For the following reasons, we affirm the decision of the trial court.

{¶2} In 1993, appellant entered a plea of guilty to the following offenses: involuntary manslaughter, in violation of R.C. 2903.04(A); aggravated robbery, in

violation of R.C. 2911.01; aggravated robbery with a firearm specification, in violation of R.C. 2911.01 and former R.C. 2941.143; and receiving stolen property with a firearm specification, in violation of R.C. 2913.51 and former R.C. 2941.143.

{¶3} Following a presentence investigation, the trial court sentenced appellant to a term of imprisonment of 34 to 85 years, plus an additional three years for the firearm specifications.

{¶4} Appellant filed a motion to withdraw his guilty plea on May 27, 2008, which was denied without an evidentiary hearing. In *State v. Gray*, this court affirmed the trial court's decision. *State v. Gray*, 11th Dist. No. 2008-T-0114, 2009-Ohio-1925.

{¶5} Thereafter, appellant filed a petition for postconviction relief. The state filed a motion to dismiss the petition, which was granted by the trial court. It is from this judgment that appellant filed a timely notice of appeal and asserts the following assignment of error:

{¶6} "The trial court committed reversible error in denying relief to the defendant under Ohio Post Conviction Statute, Ohio Revised Code, Section 2953.23, where the defendant is legally innocent as a matter of law."

{¶7} This court has held that, "[p]ursuant to R.C. 2953.21(A)(2), a petition for postconviction relief must be filed within 180 days of the date the trial transcript is filed with the court of appeals in the direct appeal. *** However, an exception to the 180-day rule is set forth in R.C. 2953.23[.]" *State v. Scuba*, 11th Dist. No. 2006-G-2713, 2006-Ohio-6203, at ¶12. (Internal citation omitted.) R.C. 2953.23 provides, in part:

{¶8} "(A) Whether a hearing is or is not held on a petition filed pursuant to section 2953.21 of the Revised Code, a court may not entertain a petition filed after the

expiration of the period prescribed in division (A) of that section or a second petition or successive petitions for similar relief on behalf of a petitioner unless division (A)(1) or (2) of this section applies:

{¶9} “(1) Both of the following apply:

{¶10} “(a) Either 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, or, subsequent to the period prescribed in division (A)(2) of section 2953.21 of the Revised Code 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.

{¶11} “(b) 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 or, if the claim challenges a sentence of death that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.

{¶12} “(2) [This subsection is not applicable. It pertains to an inmate’s actual innocence as demonstrated by the results of DNA testing.]”

{¶13} At the outset, we note that appellant pled guilty on March 19, 1993, and he was sentenced on June 30, 1993. Appellant did not file a direct appeal of his plea or sentence. Since appellant’s petition is deemed untimely under R.C. 2953.21(A)(2), as he waited nearly 14 years to file it, he bore the burden of demonstrating R.C. 2953.23 (A)(1) or (2) applied to this matter.

{¶14} A thorough review of appellant’s brief reveals that he has failed to demonstrate that he was unable to discover the “facts upon which the petitioner must rely to present the claim.” R.C. 2953.23(A)(1)(a). In fact, appellant’s brief, which consists of 25 pages, is entirely devoid of any argument that relates to the above requirements for filing a petition for postconviction relief outside of the statutorily-imposed deadline. Instead, appellant only asserts arguments to support his assertion that he is “legally innocent as a matter of law.”

{¶15} As appellant’s petition for postconviction relief was filed beyond the 180-day time period and none of the exceptions provided in R.C. 2952.23 are applicable, the trial court was not permitted to consider the petition. *State v. Scuba*, 2006-Ohio-6203, at ¶21, citing *State v. Luther*, 9th Dist. No. 05CA008771, 2006-Ohio-2414, at ¶12. The trial court did not err by denying appellant’s petition for postconviction relief.

{¶16} Additionally, we recognize that the claims asserted by appellant could have been raised on direct appeal and, as a result, they are barred by the doctrine of res judicata.

{¶17} “[P]rinciples of *res judicata* prevent relief on successive, similar motions raising issues which were or could have been raised originally.” *Brick Processors, Inc. v. Culbertson* (1981), 2 Ohio App.3d 478, paragraph one of the syllabus. As stated by the Supreme Court of Ohio in *State v. Perry* (1967), 10 Ohio St.2d 175, paragraph nine of the syllabus:

{¶18} “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 sic.)

{¶19} For the reasons stated in the opinion of this court, appellant’s assignment of error is without merit, and it is the judgment and order of this court that the judgment of the Trumbull County Court of Common Pleas is affirmed.

DIANE V. GRENDALL, J., concurs,

COLLEEN MARY O’TOOLE, J., concurs in judgment only.