

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2013-A-0043
NATHANIEL J. GREGA,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Ashtabula County Court of Common Pleas, Case No. 2012 CR 080.

Judgment: Reversed and remanded.

Nicholas A. Iarocci, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Nathaniel J. Grega, pro se, PID: A631140, Toledo Correctional Institution, P.O. Box 80033, 2001 East Central Ave., Toledo, OH 43608 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Nathaniel Grega, appeals from the judgment of the Ashtabula County Court of Common Pleas, denying multiple motions filed by appellant based upon the court's determination that it lacked jurisdiction. We reverse and remand the matter.

{¶2} Appellant was indicted on one count of robbery, in violation of R.C. 2911.02, a felony of the second degree and one count of petty theft, in violation of R.C. 2913.02, a misdemeanor of the first degree. Appellant pleaded not guilty and a jury trial

commenced. Appellant was found guilty of both charges. He was sentenced to a three-year term of imprisonment for robbery and a six-month jail term for petty theft. The sentences were ordered to be served concurrently.

{¶3} Appellant appealed his conviction and, in *State v. Grega*, 11th Dist. Ashtabula No. 2012-A-36, 2013-Ohio-4094, this court affirmed in part, reversed in part, and remanded the matter for resentencing. During the pendency of the foregoing appeal, appellant filed multiple pleadings seeking various forms of relief. Several of the pleadings were filed pursuant to R.C. 2953.21, Ohio's post-conviction relief statute. In a July 5, 2013 judgment, the trial court determined it lacked jurisdiction to consider all of the pleadings due to appellant's pending appeal. The motions were consequently denied and the underlying appeal followed. Appellant assigns the following error for our review:

{¶4} “[The] trial court erred in denying appellant's post-conviction petition, while appellant's direct appeal judgment is pending.”

{¶5} Appellant asserts the trial court possessed jurisdiction to rule upon his petition for post-conviction relief, filed October 25, 2012. The state concedes appellant's argument.

{¶6} R.C. 2953.21(C) provides, in relevant part: “The court shall consider a petition that is timely filed under division (A)(2) of this section even if a direct appeal of the judgment is pending.”

{¶7} Appellant's petition was timely filed, pursuant to R.C. 2953.21(A)(2). The trial court was consequently required to consider its merits. We therefore hold the trial court erred in denying the petition for lack of jurisdiction.

{¶8} Appellant's assignment of error has merit.

{¶9} Pursuant to the above analysis, the judgment of the Ashtabula County Court of Common Pleas is reversed and the matter is remanded for further proceedings.

DIANE V. GRENDALL, J.,

THOMAS R. WRIGHT, J.,

concur.