

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

: JUDGES:

Plaintiff-Appellee

:
: Hon. John W. Wise, P.J.
: Hon. Patricia A. Delaney.
: Hon. Craig R. Baldwin, J.

-vs-

:
: Case No. 14CA19

REGINALD SNELLING

:

Defendant-Appellant

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Richland County Court
of Common Pleas, Case No. 10-CR-43
D

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

October 6, 2014

APPEARANCES:

For Plaintiff-Appellee:

JAMES J. MAYER, JR.
RICHLAND COUNTY PROSECUTOR

JILL M. COCHRAN
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For Defendant-Appellant:

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Delaney, J.

{¶1} Defendant-Appellant Reginald Snelling appeals the February 24, 2014 judgment entry of the Richland County Court of Common Pleas. Plaintiff-Appellee is the State of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} Reaunna Dodd met Defendant-Appellant Reginald Snelling in October or November of 2009, and became involved in a romantic relationship with him. Shortly thereafter, Dodd and her 4-year-old son moved in with Snelling.

{¶3} By the end of 2009, Dodd decided to end her relationship with Snelling because he was possessive and controlling. During the week between Christmas and New Year's Eve, Dodd left the home, over Snelling's protests, to visit a friend. Realizing this was her chance to get away from Snelling, Dodd chose to stay at her friend's home instead of returning to live with Snelling.

{¶4} When Snelling decided to stay with her friend, she left all of her belongings at Snelling's house. After several attempts to call Snelling to retrieve her belongings, she finally reached him on December 31, 2009. He told her that she could come to the house to get her things. However, when she arrived, he told her that he would drive her to where her things were stored. Dodd was nervous about getting into the truck with Snelling, but called her mom on her cell phone so someone would know of her whereabouts.

{¶5} After Dodd got into Snelling's truck, he drove around aimlessly for several hours. He took her to Kroger's, but pulled out of the parking lot without stopping when

she told her mother where they were located. He then drove to Walmart and once again did not stop. He drove on to State Route 30 and headed toward Ashland.

{¶6} Dodd became afraid when Snelling left Mansfield. She repeatedly asked Snelling to let her out of the truck, but he refused. Dodd continued to relay information to her mother about her whereabouts because her mother and brother were trying to follow them in a car. However, Snelling became angry when Dodd told her mother where they were going and told her that every time she told her mother what direction they were heading, he would go a different way.

{¶7} Snelling eventually exited Route 30 and began driving down a deserted country road. Dodd was afraid Snelling was going to kill her. Snelling continued to refuse to allow Dodd to get out of the truck. Snelling turned around and got back on Route 30, but instead of taking Dodd back to Mansfield he headed south on Interstate 71. At one point, he told Dodd he was taking her to Indiana. At another time, he told her he was going to run into a semi and kill them both.

{¶8} Snelling exited I-71 at State Route 13 and Hanley Road in Mansfield. He was forced to stop at a stop sign because there was a car in front of him. As he slowed down, Dodd attempted to jump out of the truck. Snelling attempted to stop her by hitting the lock button on her door, but she unlocked the door from her side of the truck. Snelling tried to grab the back of her jacket and pull her back inside the truck, but Dodd slipped out of her jacket and ran.

{¶9} Dodd ran toward a house, but Snelling drove down the driveway of the home and reached the house first. She then ran back toward the road. Snelling got out of the truck and chased her on foot. Dodd ran into the road and stopped a PT Cruiser

with two older ladies inside. Snelling followed. She screamed at the ladies to help her, but they drove away.

{¶10} Dodd began running through a field and Snelling got back into his truck to chase her. Dodd ran back to the road and stopped another vehicle. The driver of the vehicle got out and called the police. Snelling had stopped his truck in the middle of the road and was standing by the driver's side door. Dodd's mother and brother arrived on the scene. When her brother ran toward Snelling, Snelling got back in the truck and left.

{¶11} Mansfield Police Officer Ryan Anschutz was traveling on Lexington Avenue in Mansfield when he spotted Snelling. He activated his lights and sirens and turned to pursue Snelling. Snelling drove erratically, swerving into oncoming traffic to pass other vehicles and speeding. When Snelling attempted to make an abrupt right turn at a high rate of speed, he lost control of his truck, which came to rest in the front yard of a residence.

{¶12} Snelling jumped out of the truck and ran through several back yards. He was pursued by Anschutz, who saw Snelling throw a box cutter to the ground. Anschutz eventually was able to tackle Snelling. Snelling struck the officer several times during attempts to restrain him. After Snelling was secured in handcuffs, police found a police scanner radio in his jacket pocket. The box cutter was retrieved from the path of his pursuit.

{¶13} Snelling was indicted by the Richland County Grand Jury with abduction, two counts of failure to comply with the order or signal of a police officer, and assault on a peace officer. Following a jury trial, he was convicted as charged on all counts. He was sentenced to four years incarceration for abduction and 12 months for assault. The

court merged the failure to comply convictions and sentenced him to two years incarceration on Count II.

{¶14} On June 14, 2010, Snelling filed a direct appeal from his conviction with this Court in *State v. Snelling*, 5th Dist. Richland No. 10-CA-94. Snelling filed the trial transcript on August 26, 2010. This Court affirmed Snelling's conviction in *State v. Snelling*, 5th Dist. Richland No. 10-CA-94, 2011-Ohio-3222.

{¶15} On October 11, 2011, Snelling filed a pro se motion to vacate his sentence and for appointment of counsel. The trial court overruled the motion. On April 9, 2012, Snelling filed a pro se motion for sentencing. The trial court overruled the motion and Snelling appealed. We affirmed the trial court's decision in *State v. Snelling*, 5th Dist. Richland No. 12CA79, 2013-Ohio-2633.

{¶16} On November 21, 2012, Snelling filed a pro se motion to vacate payment of court costs, fine, and/or restitution. The trial court denied the motion. Snelling appealed and we affirmed the trial court's decision in *State v. Snelling*, 5th Dist. Richland No. 13CA3, 2013-Ohio-4180.

{¶17} On May 20, 2013, Snelling filed a pro se motion to vacate or set aside conviction. Snelling filed a motion for summary judgment on January 16, 2014 and the State responded.

{¶18} The trial court considered Snelling's motion to vacate or set aside conviction as a petition for post-conviction relief. By judgment entry filed February 24, 2014, the trial court found Snelling's petition for post-conviction relief was untimely and it was a successive petition for post-conviction relief. The trial court further found Snelling's arguments were barred by res judicata.

{¶19} It is from this decision Snelling now appeals.

ASSIGNMENTS OF ERROR

{¶20} Snelling raises four Assignments of Error:

{¶21} "I. Defendant argues that the court abused its discretion and failed to respond to the defendant's motion for summary judgment. The defendant's motion for summary judgment, the defendant did maintain that the trial court did violate petitioner's constitutional rights, and Ohio constitutional rights.

{¶22} "II. Trial counsel was ineffective assistance of trial counsel. The defendant's attorney failed to call his witness to trial that would of changed the outcome of trial. Thus denying the defendant a fair trial - and due process of law and equal protection, and effective assistance of trial counsel, pursuant to the fifth, sixth, and fourteenth amendment to the United States Constitution and Sections 10 and 16, Article I of the Ohio Constitution, further appellate counsel failed to raise this issue on appeal.

{¶23} "III. The trial court erred to the prejudice pursuant to the clear language of O.R.C. § 2945.75 a verdict form signed by a jury must include either the degree of the offense of which a defendant is convicted or a statement that an aggravating element has been found to justify conviction a defendant of a greater degree of a criminal offense.

{¶24} "IV. An unsworn complaint is void and any resulting conviction would also be void."

ANALYSISII., III., and IV.

{¶25} For ease of discussion, we will first address Snelling's second, third, and fourth Assignments of Error. Snelling argues the trial court erred in denying his petition for post-conviction relief. We disagree.

{¶26} The trial court correctly considered Snelling's motion to vacate or set aside conviction as a petition for post-conviction relief. Snelling's motion was a petition for post-conviction because, pursuant to R.C. 2953.21(A)(1), it was (1) filed subsequent to Snelling'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. *State v. Reynolds*, 79 Ohio St.3d 158, 160, 679 N.E.2d 1131, 1133 (1997).

{¶27} In its February 24, 2014 judgment entry, the trial court first found Snelling's petition for post-conviction relief was untimely filed. R.C. 2953.21(A)(2) states, "[e]xcept as otherwise provided in section 2953.23 of the Revised Code, a petition under division (A)(1) of this section shall be filed no later than one hundred eighty 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 * * *." Snelling filed a direct appeal of his conviction and sentence to the Fifth District Court of Appeals. Snelling filed the trial transcript on August 26, 2010. Snelling had until February 22, 2011 to file his petition for post-conviction relief. Snelling filed his petition for post-conviction relief on May 20, 2013.

{¶28} However, pursuant to R.C. 2953.23(A), the court may consider an untimely or a successive petition for post-conviction relief. In order for the trial court to

entertain an untimely or a successive petition for post-conviction relief, both conditions must apply:

(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.

(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.

{¶29} The trial court found the exceptions did not apply to Snelling's untimely petition for post-conviction relief. We agree.

{¶30} Snelling first argued in his petition for post-conviction relief that the complaining documents and jury instructions were defective. These matters cannot be considered newly discovered evidence for they were in the trial court record. Any errors as to these issues could have been raised on direct appeal and are therefore barred under the doctrine of res judicata. "Under the doctrine of res judicata, a final judgment of conviction bars the defendant from raising and litigating in any proceeding, except an

appeal from that judgment, any defense or any claimed lack of due process that the defendant raised or could have raised at the trial which resulted in that judgment of conviction or on an appeal from that judgment.” *State v. Callahan*, 7th Dist. Mahoning No. 12 MA 173, 2013–Ohio–5864, ¶ 9 quoting *State v. Perry*, 10 Ohio St.2d 175, 180, 226 N.E.2d 104 (1967). Conversely, issues properly raised in a post-conviction petition are those that could not have been raised on direct appeal because the evidence supporting the issue is outside the record. *State v. Milanovich*, 42 Ohio St.2d 46, 50, 325 N.E.2d 540 (1975).

{¶31} Snelling next argued in his petition for post-conviction relief that his trial counsel was ineffective because counsel failed to call his brother to testify at trial. Snelling states his brother would have testified that Dodd willingly got into the truck with Snelling. Snelling’s brother was available to testify at trial, but he is now deceased.

{¶32} A properly licensed attorney is presumed competent. *State v. Hamblin*, 37 Ohio St.3d 153, 524 N.E.2d 476 (1988). Therefore, in order to prevail on a claim of ineffective assistance of counsel, the appellant must show counsel's performance fell below an objective standard of reasonable representation and but for counsel's error, the result of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674(1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989). In other words, the appellant must show that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. *Id.* Where a defendant, represented by new counsel upon direct appeal, fails to raise therein the issue of competent trial counsel and said issue could fairly have been determined without resort to evidence

outside the record, *res judicata* is a proper basis for dismissing defendant's petition for post-conviction relief. *State v. Cole*, 2 Ohio St.3d 112, 443 N.E.2d 169, at syllabus (1982); *State v. Cassano*, 5th Dist. Richland No. 12CA55, 2013-Ohio-1783, ¶ 53.

{¶33} In Snelling's direct appeal, Snelling raised the argument of ineffective assistance of counsel. He argued his trial counsel was ineffective for failing to object to the testimony of Dodd's mother and for failing to object to the admission of testimony as to the box cutter. We overruled the error in our decision affirming Snelling's conviction and sentence. The argument as to the failure to call Snelling's brother to testify could have been raised on direct appeal. As such, we find the evidence is not newly discovered and is further barred by the doctrine of *res judicata*.

{¶34} Accordingly, the trial court correctly determined Snelling's petition for post-conviction relief was untimely filed and the issues raised were further barred by the doctrine of *res judicata*.

{¶35} Snelling's second, third, and fourth Assignments of Error are overruled.

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{¶36} Snelling argues in his first Assignment of Error the trial court failed to consider his motion for summary judgment when it denied his petition for post-conviction relief. In our findings as to the second, third, and fourth Assignments of Error, we agreed with the trial court's conclusion that Snelling's petition for post-conviction relief was untimely filed. Snelling's motion for summary judgment was likewise without merit and therefore properly resolved by the February 24, 2014 judgment entry.

{¶37} Snelling's first Assignment of Error is overruled.

CONCLUSION

{¶38} The judgment of the Richland County Court of Common Pleas is affirmed.

By: Delaney, J.,

Wise, P.J. and.

Baldwin, J., concur.