

[Cite as *State v. Ross*, 2017-Ohio-9408.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE OF OHIO,)	
)	
PLAINTIFF-APPELLEE,)	
)	CASE NO. 16 MA 0180
V.)	
)	OPINION
LAWRENCE E. ROSS,)	
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from Court of Common Pleas of Mahoning County, Ohio Case No. 96 CR 192

JUDGMENT: Affirmed

APPEARANCES:
For Plaintiff-Appellee Paul Gains
Prosecutor
Ralph M. Rivera
Assistant Prosecutor
21 W. Boardman St., 6th Floor
Youngstown, Ohio 44503

For Defendant-Appellant Lawrence E. Ross, Pro-se
Marion Correction Inst.
P.O. Box 57
Marion, Ohio 43302

JUDGES:
Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: December 14, 2017

[Cite as *State v. Ross*, 2017-Ohio-9408.]
DONOFRIO, J.

{¶1} Defendant-appellant, Lawrence Ross, appeals from a Mahoning County Common Pleas Court judgment denying his postconviction petition.

{¶2} We set out the facts of this case in appellant’s direct appeal as follows.

This appeal stems from an incident which occurred on February 5, 1996, at approximately 9:00 p.m. Mark Brown was at his northside home in Youngstown, Ohio, along with his fiancé, Regina Thomas. Also present in the home were Regina Thomas' two younger brothers, fifteen year old Frank Teemer and eleven year old Rance Teemer, and Thomas' son, seven year old William Thomas. Mark Brown's son, eleven year old Mark Brown, Jr., was also at the home.

Appellant, along with three other men, broke down the front door to the home and entered yelling “police”. Appellant was brandishing an assault rifle. Regina Thomas, Frank Teemer, and Mark Brown, Jr. were forced at gunpoint to lie face down on the floor. William Thomas and Rance Teemer, fled from the living room up the stairs to the bedrooms to hide. Appellant and two of his accomplices went after Mark Brown who also had begun to run upstairs. As the three approached the top of the stairs, Mark Brown shoved appellant and one of the other accomplices against the wall and then fled back down the stairs. As Mark Brown was going back down the stairs, appellant fired two shots, one striking Brown in the arm. Brown made it out the front door and to the front lawn. Appellant pursued Brown and shot him in the back as he tried to run away.

Robert Maravola, a neighbor, saw appellant shoot Brown and saw Brown stumble and collapse. Maravola called 911, then ran outside with a gun and appellant and his three accomplices fled the scene. Maravola ran up to where Brown was lying. Maravola asked Brown, “Who did this to you?” Brown responded that it was appellant. Brown told Maravola, “I'm not going to make it. Go check on my boys. Go

make sure my kids are okay.”

Officer David Ellis of the Youngstown Police Department responded to the scene and went to Brown. He asked Brown who had shot him. Again, Brown indicated that it was appellant. Brown also told Officer Ellis, “I’m not going to make it.” Brown died shortly thereafter.

On March 22, 1996, a Mahoning County Grand Jury indicted appellant on one count of aggravated murder with a death specification, one count of aggravated burglary, and one count of having weapons while under disability. Each count carried a firearm specification.

State v. Ross, 7th Dist. Nos. 96 C.A. 247, 96 C.A. 251, 1999 WL 826223, *1 (Oct. 12, 1999).

{¶13} Appellant was convicted of all counts but the jury rejected the death penalty and recommended 30 years to life in prison. Appellant filed a direct appeal with this court and we affirmed the trial court’s judgment. *Ross*, 7th Dist. Nos. 96 C.A. 247, 96 C.A. 251.

{¶14} Following his direct appeal, appellant filed several petitions asking that we compel the trial court to perform various acts. See *State ex rel. Ross v. Krichbaum*, 7th Dist. No. 07-MA-151, 2007-Ohio-7198, affirmed by *State ex rel. Ross v. State*, 102 Ohio St.3d 73, 2004-Ohio-1827, 806 N.E.2d 553; *State ex rel. Ross v. Krichbaum*, 7th Dist. No. 09-MA-142, 2009-Ohio-5514, dismissed by *State ex rel. Ross v. Krichbaum*, 124 Ohio St.3d 1436, 2010-Ohio-187, 920 N.E.2d 368; *State ex rel. Ross v. Krichbaum*, 7th Dist. No. 11-MA-89 (dismissed as moot). Appellant then filed a postconviction petition, which the trial court denied and which we affirmed on appeal. *State v. Ross*, 7th Dist. No. 11-MA-32, 2012-Ohio-2433.

{¶15} On May 9, 2016, appellant, acting pro se, filed a motion to suppress evidence that was used during his trial. The trial court overruled the motion as untimely.

{¶16} On August 29, 2016, appellant, still acting pro se, filed a Petition to Vacate or Set Aside Judgment or Sentence pursuant to R.C. 2953.21. In this

postconviction petition, appellant made allegations that certain evidence should have been suppressed at his trial, that the state failed to disclose exculpatory evidence, and that his trial counsel was ineffective. The trial court denied appellant's petition.

{¶17} Appellant filed a timely notice of appeal on November 23, 2016. He now raises a single assignment of error.

{¶18} Appellant's assignment of error states:

THE PROSECUTION FAILED TO DISCLOSE THE PERJURED TESTIMONY OF ITS PRIMARY WITNESS, VIOLATING THE APPELLANT'S FOURTEENTH AMENDMENT RIGHTS AS GUARANTEED BY THE UNITED STATES CONSTITUTION.

{¶19} Appellant argues that the state withheld exculpatory evidence from him, specifically a ballistics report on a beer bottle that placed him at the scene of the crime. He then talks about the Confrontation Clause and the Due Process Clause but does not relate them to the facts of this case.

{¶110} A petitioner must file his postconviction petition no later than 365 days after the date on which the trial transcript is filed in the direct appeal of the judgment of conviction. R.C. 2953.21(A)(2).

{¶111} In this case, the transcripts were filed in appellant's direct appeal on February 6, and March 6, 1997. Thus, over 19 years have passed since the filing of the transcripts in appellant's direct appeal.

{¶112} The requirement that a petition for postconviction relief be filed timely is jurisdictional. R.C. 2953.23(A) ("a court may not entertain a petition filed after the expiration of the period prescribed [in R.C. 2953.21]"). Unless the petition is filed timely, the court is not permitted to consider the substantive merits of the petition. *State v. Beaver*, 131 Ohio App.3d 458, 461, 722 N.E.2d 1046 (11th Dist.1998) (the trial court should have summarily dismissed appellant's untimely petition without addressing the merits).

{¶113} If a postconviction relief petition is filed beyond the time limitation or the

petition is a second or successive petition for postconviction relief, R.C. 2953.23(A) precludes the court from entertaining the petition unless: (1) the petitioner shows that he was unavoidably prevented from discovering the facts upon which his claim for relief is based, or (2) after the time period expired, the United States Supreme Court recognized a new federal or state right that applies retroactively to the petitioner and is the basis of his claim for relief. R.C. 2953.23(A)(1)(a). The petitioner must then show “by clear and convincing evidence that, but for constitutional error at trial, no reasonable fact finder would have found [him] guilty of the offense of which [he] was convicted.” R.C. 2953.23(A)(1)(b). Unless the defendant makes the showings required by R.C. 2953.23(A), the trial court lacks jurisdiction to consider either an untimely or a second or successive petition for postconviction relief. *State v. Carter*, 2d Dist. No. 03-CA-11, 2003-Ohio-4838, citing *State v. Beuke*, 130 Ohio App.3d 633, 720 N.E.2d 962 (1st Dist.1998).

{¶14} Appellant did not offer any reason for his 19-year delay in filing his petition. Thus, the trial court was without jurisdiction to entertain appellant’s postconviction petition.

{¶15} Accordingly, appellant’s sole assignment of error is without merit.

{¶16} For the reasons stated above, the trial court’s judgment is hereby affirmed.

Waite, J., concurs.

DeGenaro, J., concurs.