

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-13-1155

Appellee

Trial Court No. CR0198905590

v.

James Galloway

DECISION AND JUDGMENT

Appellant

Decided: June 27, 2014

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

James Galloway, pro se.

* * * * *

SINGER, J.

{¶ 1} Appellant, James Galloway, appeals the judgment of the Lucas County Court of Common Pleas, dismissing his “Petition to Vacate Void Conviction, Judgment, and Sentence.” Because his motion was an untimely petition for postconviction relief, we affirm.

{¶ 2} Appellant sets forth the following assignments of error:

I. The trial court erred in construing the appellant's pleadings as a postconviction petition when on its (sic) face, the initial pleading was a direct jurisdictional challenge. Thus violating this appellant's constitutional rights under the 5th and 14th amendments of the US Constitution and Article 1, Section 16 of the Ohio Constitution.

II. The trial court erred in not holding an evidentiary hearing to determine the initial trial court's jurisdiction to hear the case due to a lack of subject-matter resulting from the failure to have a valid criminal complaint. This failure violates this appellant's constitutional rights under the 5th and 14th amendments of the US Constitution and Article 1, Section 16 of the Ohio Constitution.

III. The trial court erred in refusing to provide this appellant a copy of the original transcripts for purposes of this appeal to enable him to point to specific portions of the record for this court's consideration. This denial deprived this appellant of his right to due process under the 5th and 14th amendments of the U.S. Constitution and Article 1, Section 16 of the Ohio Constitution.

{¶ 3} Appellant was convicted in 1990 of three counts of rape in violation of R.C. 2907.02 and two counts of gross sexual imposition in violation of R.C. 2907.05(A)(3).

This court affirmed his convictions in *State v. Galloway*, 6th Dist. Lucas No. L-90-056, 1991 WL 254216 (Nov. 8, 1991).

{¶ 4} On May 23, 2013, appellant filed the petition that is at issue in his appeal. In his petition he challenged the sufficiency of his original indictment and asked the court to vacate his conviction. The trial court, construing appellant's motion as one for postconviction relief, denied his petition citing its untimeliness and the fact that it is a successive petition asserting no new evidence.

{¶ 5} Appellant's assignments of error will be considered together. A motion to correct or vacate a sentence is a petition for postconviction relief irrespective of its caption. *State v. Reynolds*, 79 Ohio St.3d 158, 160, 679 N.E.2d 1131 (1997). Issues that could have been raised on direct appeal are barred from consideration in a motion for postconviction relief by the doctrine of res judicata. *Id.*, citing *State v. Duling*, 21 Ohio St.2d 12, 254 N.E.2d 670 (1970), *rev'd on other grounds*, *Duling v. Ohio*, 408 U.S. 936, 92 S.Ct. 2861, 33 L.Ed.2d 753 (1972). Moreover, a petition for postconviction relief must be filed no later than 180 days after the expiration of the time for filing an appeal, R.C. 2953.21(A)(2), absent specific exceptions not present here. *See* R.C. 2953.23(A).

{¶ 6} Here, appellant's petition was filed nearly two decades out of time and raised issues that could have been raised on an original appeal. No specific exceptions apply to this appeal. Consequently, the trial court committed no error by declining to consider it on the merits.

{¶ 7} Moreover, this appears to be, at least, appellant’s seventh petition for postconviction relief. When a petition for postconviction relief is a second or successive petition, R.C. 2953.23(A)(1)(a) prohibits a trial court from hearing said petition unless the petitioner either demonstrates (1) that he was “unavoidably prevented from discovering the facts upon which” he relies; or (2) that after the 180 day time limit for filing a petition for postconviction relief, “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 upon that right.”

{¶ 8} Neither of the alternative requirements exists in this case to permit consideration of this instant petition as a successive petition for postconviction relief under R.C. 2953.23(A)(1). Accordingly, appellant’s three assignments of error are found not well-taken.

{¶ 9} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is hereby ordered to pay the court costs incurred on appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

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