

[Cite as *State v. Mangus*, 2009-Ohio-6563.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No 06AP-1105 (C.P.C. No. 02CR11-6498)
Jack W. Mangus, III,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 15, 2009

Ron O'Brien, Prosecuting Attorney, and *Kimberly M. Bond*, for appellee.

Jack W. Mangus, pro se.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, Jack W. Mangus III, appeals from a judgment of the Franklin County Court of Common Pleas denying his motion for resentencing. For the following reasons, we affirm.

{¶2} In 2002, a Franklin County Grand Jury indicted appellant with two counts of felonious assault in violation of R.C. 2903.11, two counts of murder in violation of R.C. 2903.02, and one count of aggravated murder in violation of R.C. 2903.01 with a death

penalty specification pursuant to R.C. 2929.04(A)(9). Appellant initially entered a not guilty plea to the charges.

{¶3} In February 2004, appellant withdrew his previously entered not guilty plea and entered a guilty plea to one count of felonious assault and one count of involuntary manslaughter, a lesser included offense of murder. The trial court accepted appellant's guilty plea, found him guilty, and imposed jointly recommended consecutive sentences of two years in prison for the felonious assault count and ten years for the involuntary manslaughter count for a total of 12 years in prison. Appellant did not appeal his convictions or sentencing.

{¶4} On July 27, 2005, appellant filed a "Motion for Resentencing pursuant to R.C. 2929.14." The trial court construed appellant's motion as a petition for post-conviction relief and denied it because it was untimely.

{¶5} Appellant appeals and assigns the following error:

THE TRIAL COURT ERRED IN ORDERING THE APPELLANTS SENTENCE TO BE SERVED CONSECUTIVE, WITHOUT ADDITIONAL FINDINGS OF FACT.

{¶6} Appellant's assignment of error does not address the jurisdictional issue that must be considered first: whether the trial court erred in determining that his petition was untimely. The state claims that the trial court properly denied appellant's petition because it was untimely. We agree.

{¶7} The post-conviction relief process is a collateral civil attack on a criminal judgment, not an appeal of the judgment. *State v. Steffen* (1994), 70 Ohio St.3d 399, 410. "It is a means to reach constitutional issues which would otherwise be impossible to reach because the evidence supporting those issues is not contained" in the trial court

record. *State v. Murphy* (Dec. 26, 2000), 10th Dist. No. 00AP-233. Post-conviction review is not a constitutional right but, rather, is a narrow remedy which affords a petitioner no rights beyond those granted by statute. *State v. Calhoun* (1999), 86 Ohio St.3d 279, 281.

{¶8} We agree with the trial court's construction of appellant's motion for resentencing as a petition for post-conviction relief. See *State v. Williams*, 10th Dist. No. 06AP-742, 2007-Ohio-1015, ¶11; *State v. McAllister*, 10th Dist. No. 06AP-843, 2007-Ohio-1816, ¶6.¹

{¶9} R.C. 2953.21 sets forth the requirements for filing a petition for post-conviction relief. R.C. 2953.21(A)(2) provides:

[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 or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the supreme court. If no appeal is taken, * * * the petition shall be filed no later than one hundred eighty days after the expiration of the time for filing the appeal.

{¶10} Because appellant did not file a direct appeal from his convictions, appellant had to file a petition for post-conviction relief no later than 180 days after the time for a direct appeal from his convictions expired. Appellant was sentenced on February 20, 2004, and his time for a direct appeal from those convictions expired 30 days later, on March 22, 2004. His time for filing a petition for post-conviction relief, therefore, expired

¹ We note that to the extent appellant's motion could be construed as a request of the trial court to reconsider its sentence, a trial court lacks the jurisdiction to reconsider its own valid final judgment. *State v. Dunn*, 4th Dist. No. 06CA23, 2007-Ohio-854 (citing *State v. Wilson*, 10th Dist. No. 05AP-939, 2006-Ohio-2750, ¶9).

180 days later, on September 18, 2004. Appellant did not file his petition until July 27, 2005. Therefore, appellant's petition was untimely.

{¶11} A trial court lacks jurisdiction to entertain an untimely petition for post-conviction relief unless a petitioner demonstrates that one of the exceptions in R.C. 2953.23(A) applies. *State v. Hollingsworth*, 10th Dist. No. 08AP-785, 2009-Ohio-1753, ¶8; *State v. Raines*, 10th Dist. No. 03AP-1076, 2004-Ohio-2524, ¶5. Those exceptions allow a trial court to consider untimely petitions for post-conviction relief in limited situations.

{¶12} Here, appellant has made no attempt to argue, much less establish, that any of the exceptions applied to his petition. With regard to R.C. 2953.23(A)(1), he did not allege that he was unavoidably prevented from discovering the facts upon which he relies in his petition or that his claim was based on a new federal or state right recognized by the United States Supreme Court that could be retroactively applied to appellant's case. Further, R.C. 2953.23(A)(1) does not allow a trial court to consider an untimely petition to challenge a sentence brought by a non-capital petitioner. *State v. Searcy*, 10th Dist. No. 06AP-572, 2006-Ohio-6993, ¶8. Appellant is a non-capital petitioner. Finally, there is no indication that DNA results establish appellant's actual innocence. R.C. 2953.23(A)(2).

{¶13} Because appellant failed to establish the applicability of an exception that would allow the trial court to consider his untimely petition, the trial court lacked jurisdiction to entertain his petition for post-conviction relief. *State v. Russell*, 10th Dist. No. 05AP-391, 2006-Ohio-383, ¶10. Accordingly, the trial court did not err in denying

appellant's petition, although technically, the petition should have been dismissed for lack of jurisdiction. *Hollingsworth* at ¶10.

{¶14} Our disposition of the jurisdictional issue renders moot appellant's assignment of error, which addresses the merits of his petition. *State v. Hatfield*, 10th Dist. No. 07AP-784, 2008-Ohio-1377, ¶9. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

FRENCH, P.J., and McGRATH, J., concur.
