

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2009-10-251
 :
 - vs - : OPINION
 : 7/6/2010
 :
 JOSEPH PIESCIUK, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR03-03-0387

Robin N. Piper III, Butler County Prosecuting Attorney, Lina N. Alkamdawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45012-0515, for plaintiff-appellee

Joseph Piesciuk, A466-025, Richland Correctional Institution, 1001 Olivesburg Road, P.O. Box 8107, Mansfield, Ohio 44901, defendant-appellant, pro se

HENDRICKSON, J.

{¶1} Defendant-appellant, Joseph Piesciuk, appeals the decision of the Butler County Court of Common Pleas denying his petition for postconviction relief. For the reasons outlined below, we affirm.

{¶2} On March 20, 2003, the Butler County Grand Jury returned a 34-count indictment against appellant stemming from his role as the president of Original Home Improvement Center, a remodeling company located in Middletown, Ohio. Following a

jury trial in December of 2003, appellant was found guilty of 13 counts of theft by deception, eight counts of money laundering, and one count of engaging in a pattern of corrupt activity. Appellant was subsequently sentenced to serve a total of 21 years in prison and ordered to pay \$141,734 as restitution. Appellant then appealed his conviction and sentence.

{¶13} On March 14, 2005, while his direct appeal was still pending in this court, appellant filed a postconviction relief petition arguing that his conviction and sentence violated a litany of his constitutional rights. On April 1, 2005, without first issuing findings of fact and conclusions of law, the trial court summarily denied appellant's petition. Appellant has not appealed from this decision.

{¶14} On October 31, 2005, this court affirmed appellant's conviction and sentence, but reversed and remanded a portion of the trial court's restitution order that was not supported by sufficient evidence. See *State v. Piesciuk*, Butler App. No. CA2004-03-055, 2005-Ohio-5767. On May 3, 2006, the Ohio Supreme Court reversed appellant's sentence and remanded the matter to the trial court for resentencing pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. See *In re Ohio Criminal Sentencing Statutes Cases*, 109 Ohio St.3d 313, 2006-Ohio-2109.

{¶15} On March 23, 2007, the trial court resentenced appellant to 21 years in prison and ordered him to pay \$132,734 as restitution. Appellant again appealed his sentence.

{¶16} On January 30, 2008, while his appeal was still pending in this court, appellant filed another postconviction relief petition again claiming his conviction violated a plethora of his constitutional rights.

{¶17} On August 11, 2008, this court affirmed appellant's resentencing upon remand, but modified the restitution order to correct a mathematical error. See *State v.*

Piesciuk, Butler App. No. CA2007-04-086, 2008-Ohio-4054. Appellant appealed his resentencing to the Ohio Supreme Court, but the court declined review. See *State v. Piesciuk*, 120 Ohio St.3d 1458, 2008-Ohio-6813.

{¶18} On June 5, 2009, over 17 months after he filed his most recent petition, appellant filed a supplemental petition that purportedly contained "exculpatory [newly discovered] evidence which exonerates him of certain specific charges alleged in the indictment." (Brackets sic.) On September 9, 2009, after the state filed its response, the trial court summarily denied appellant's petition.

{¶19} Appellant now appeals the trial court's decision denying his most recent postconviction relief petition, raising one assignment of error.

{¶10} "DUE PROCESS IS VIOLATED WHEN A TRIAL COURT ERRONEOUSLY MISAPPLIES A TRIGGERING DATE BASED ON AN AMBIGUOUS STATUTE R.C. 2953.21 THAT DOES NOT SPECIFICALLY PROVIDE CLARITY WHEN PIECEMEAL PORTIONS OF TRANSCRIPTS OF TRIAL PROCEEDINGS ARE SUBMITTED FOR REVIEW BY APPELLANT ON DIFFERENT DATES AND TIMES."

{¶11} In his sole assignment of error, appellant argues that the trial court erred by denying his most recent postconviction relief petition. In support of this claim, although not particularly clear, appellant essentially argues that his petition was timely filed because the applicable 180-day time limit did not begin to run until after he was resentenced upon remand pursuant to *Foster*.

{¶12} Contrary to appellant's claim, however, "Ohio case law indicates that the time limit for a postconviction relief petition runs from the original appeal of the conviction, and that a resentencing hearing does not restart the clock for postconviction relief purpose as to any claims attacking the underlying conviction." *State v. Seals*, Cuyahoga App. No. 93198, 2010-Ohio-1980, ¶7; see, also, *State v. Haschenburger*,

Mahoning App. No. 08-MA-223, 2009-Ohio-6527, ¶27; *State v. Casalicchio*, Cuyahoga App. No. 89555, 2008-Ohio-2362, ¶22; *State v. O'Neal*, Medina App. No. 08CA0028-M, 2008-Ohio-6572, ¶13; *State v. Gross*, Muskingum App. No. CT2006-0006, 2006-Ohio-6941, ¶34. To hold otherwise would extend "well beyond the time limits set forth in R.C. 2953.21(A)(2) to an undetermined time in the future, all contrary to the intent of the legislature." *State v. Laws*, Franklin App. No. 04AP283, 2004-Ohio-6446, ¶6; see, also, *Haschenburger* at ¶27. Therefore, because the complete trial transcript for his direct appeal was filed on September 14, 2004, appellant's most recent postconviction relief petition, which was filed over three years later, was clearly untimely as it was filed well outside the applicable 180-day time limit. See R.C. 2953.21(A)(2).

{¶13} In addition, because appellant has not claimed he was unavoidably prevented from discovering the facts necessary for his claim, nor has he claimed the United States Supreme Court has recognized a new federal or state right that applies retroactively to persons in his situation, appellant has not advanced either prerequisite necessary for the court to entertain his untimely petition. See R.C. 2953.23(A)(1)(a). Furthermore, even if he had satisfied these prerequisites, appellant has not shown by clear and convincing evidence that, but for the numerous alleged constitutional errors at trial, no reasonable factfinder would have found him guilty of 13 counts of theft by deception, eight counts of money laundering, and one count of engaging in a pattern of corrupt activity. R.C. 2953.23(A)(1)(b). In turn, because he did not satisfy the requirements necessary for the court to entertain his untimely petition for postconviction relief, the trial court did not err in dismissing appellant's petition. Accordingly, appellant's sole assignment of error is overruled.

{¶14} Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.