

[Cite as *State v. Adams*, 2011-Ohio-1721.]

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

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2010-12-321
 :
 - vs - : OPINION
 : 4/11/2011
 :
 JERRY ADAMS III, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2009-02-0287

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HUTZEL, J.

{¶1} Defendant-appellant, Jerry Adams III, appeals a decision of the Butler County Court of Common Pleas denying his motion for relief from judgment in postconviction relief proceedings.

{¶2} In August 2009, appellant was convicted of aggravated murder and

having weapons while under disability. On October 30, 2009, the trial court sentenced appellant to 25 years to life in prison and a consecutive five-year mandatory prison term for a firearm specification. Appellant timely appealed his conviction and sentence to the Twelfth District Court of Appeals. A transcript of the trial proceedings was filed with this court on January 22, 2010. We affirmed appellant's conviction and sentence on direct appeal. *State v. Adams*, Butler App. No. CA2009-11-293, 2011-Ohio-536.

{¶13} On July 28, 2010, appellant filed a petition for postconviction relief (PCR) alleging ineffective assistance of trial counsel. The trial court dismissed the petition on the ground it was not timely filed under R.C. 2953.21 and 2953.23. The trial court did not address the merits of the petition. Appellant did not appeal the denial of his PCR petition. Rather, on September 30, 2010, appellant filed a Civ.R. 60(B) motion for relief from judgment, seeking the reversal of the denial of his PCR petition. Appellant alleged he untimely filed his PCR petition because he was misinformed by counsel as to the correct filing date for the petition.

{¶14} On November 17, 2010, the trial court denied appellant's Civ.R. 60(B) motion. In denying the motion, the trial court addressed the merits of appellant's untimely PCR petition. In its decision, the trial court noted that a court lacks jurisdiction to entertain an untimely or successive PCR petition that does not meet the requirements under R.C. 2953.23(A). The trial court also found that appellant's PCR petition failed to establish grounds for relief under R.C. 2953.21(A)(1), and that his claims were barred by res judicata. Consequently, the trial court dismissed the petition "without an evidentiary hearing as it [was] not supported by sufficient documentary evidence."

{¶15} Appellant appeals, raising three assignments of error.

{¶16} Assignment of Error No. 1:

{¶17} "THE TRIAL COURT ERRED IN VIOLATION OF THE APPELLANT'S ABSOLUTE RIGHT TO PROCEDURAL DUE PROCESS OF LAW UNDER THE OHIO AND U.S. CONSTITUTION IN DETERMINING THAT THE PETITION DID NOT ASSERT CLAIMS THAT COULD RENDERED [SIC] THE CONVICTION AND OR SENTENCE VOID OR VOIDABLE."

{¶18} Assignment of Error No. 2:

{¶19} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT AND IN VIOLATION OF HIS ABSOLUTE RIGHT TO PROCEDURAL DUE PROCESS OF LAW IN DETERMINING THAT THE DOCTRINE OF RES JUDICATA BARRED THE PETITION FROM THE COURT'S PURVIEW."

{¶110} Assignment of Error No. 3:

{¶111} "IT WAS PREJUDICIAL ERROR AND A DENIAL OF APPELLANT'S ABSOLUTE RIGHT TO PROCEDURAL DUE PROCESS OF LAW UNDER THE OHIO AND U.S. CONSTITUTION WHERE THE TRIAL COURT ADJUDICATED THE PETITION FOR POSTCONVICTION RELIEF WITHOUT FIRST ORDERING AND CONDUCTING AN EVIDENTIARY HEARING IN THIS CASE."

{¶112} At the outset, we note that the state asks us to recast appellant's Civ.R. 60(B) motion as a second PCR motion pursuant to the Ohio Supreme Court's decision in *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, even though the trial court did not do so. In support of its request, the state cites *State v. Joy*, Hocking App. No. 08CA10/08AP10, 2009-Ohio-2211, for the proposition that when a defendant uses a Civ.R. 60(B) motion to challenge the denial of postconviction relief,

such motion should be treated as a PCR petition. For the reasons that follow, we decline to recast appellant's Civ.R. 60(B) motion as a PCR petition.

{¶13} In *Schlee*, the supreme court held that "the plain language of Crim.R. 57(B) permits a trial court in a criminal case to look to the Rules of Civil Procedure for guidance when no applicable Rule of Criminal Procedure exists. * * * Courts may recast irregular motions into whatever category necessary to identify and establish the criteria by which the motion should be judged." *Id.* at ¶10, 12. A motion qualifies as a PCR petition under R.C. 2953.21 if it (1) is filed after a defendant's direct appeal; (2) claims a denial of constitutional rights; (3) seeks to render a judgment void; and (4) asks the trial court to vacate the judgment. *Id.*; *State v. Strunk*, Butler App. No. CA2010-09-085, 2011-Ohio-417, ¶10. Thus, where a criminal defendant, subsequent to his direct appeal, files a motion seeking vacation or correction of his sentence on the basis his constitutional rights have been violated, such a motion is a PCR petition as defined in R.C. 2953.21. *State v. Reynolds*, 79 Ohio St.3d 158, 160, 1997-Ohio-304.

{¶14} We find that appellant's Civ.R. 60(B) motion is not a petition for postconviction relief as defined in R.C. 2953.21. Unlike his (untimely) PCR petition, appellant's Civ.R. 60(B) motion does not claim a denial of constitutional rights, nor does it seek to vacate his conviction or sentence. In other words, appellant's Civ.R. 60(B) motion does not seek to vacate his conviction or sentence for aggravated murder on the basis his constitutional rights have been violated. See *Reynolds*. Rather, the Civ.R. 60(B) motion merely seeks to reverse the dismissal of his PCR petition on the ground appellant was misinformed as to the correct filing date for the petition.

{¶15} We also find that *Joy* is not applicable to the case at bar. In *Joy*, the trial court denied Gregory Joy's PCR petition on the ground it was untimely filed. Two years later, Joy filed a motion to vacate judgment under Civ.R. 60(B). The trial court granted the motion, held a resentencing hearing, and reimposed the same sentence. The Fourth Appellate District found that the trial court lacked jurisdiction to reconsider Joy's sentence because Joy's motion, which sought to overturn the final judgment in his criminal case, was a PCR petition pursuant to *Schlee*. As noted above, appellant's Civ.R. 60(B) motion did not seek to overturn his conviction or sentence but merely sought to reverse the dismissal of his PCR petition. We will therefore consider appellant's Civ.R. 60(B) motion as a Civ.R. 60(B) motion. See *Schlee*, 2008-Ohio-545 at ¶13 (recognizing that some motions may not be recast as PCR petitions).

{¶16} In denying appellant's Civ.R. 60(B) motion, the trial court addressed the merits of appellant's PCR petition. Specifically, the trial court found that appellant's PCR petition failed to establish grounds for relief under R.C. 2953.21(A)(1), and that his claims were barred by res judicata. Consequently, the trial court dismissed the petition "without an evidentiary hearing as it [was] not supported by sufficient documentary evidence."

{¶17} On appeal, appellant challenges the trial court's foregoing findings.

{¶18} For the reasons that follow, we decline to address appellant's arguments under his assignments of error that we should find the trial court improperly addressed the merits of appellant's PCR petition when it denied his Civ.R. 60(B) motion.

{¶19} To prevail on a motion brought under Civ.R. 60(B), the movant must

demonstrate that: "(1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds for relief are Civ.R. 60(B)(1), (2), or (3), not more than one year after the judgment, order or proceeding was entered or taken." *GTE Automatic Electric v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, paragraph two of the syllabus. The moving party must satisfy all three prongs of the test. *Id.* at 151.

{¶20} A trial court is vested with complete discretion in deciding whether to grant or deny a Civ.R. 60(B) motion. *State ex rel. Russo v. Deters*, 80 Ohio St.3d 152, 153, 1997-Ohio-351. Thus, a trial court's ruling will not be disturbed on appeal absent an abuse of discretion. *Id.* An abuse of discretion connotes conduct which is unreasonable, arbitrary, or unconscionable. *Id.*

{¶21} In his Civ.R. 60(B) motion, appellant argued at length that he was entitled to relief under Civ.R. 60(B)(5), rather than Civ.R. 60(B)(1), based upon his counsel's incorrect information regarding the filing date for the PCR petition. However, Civ.R. 60(B) also imposes on the moving party an affirmative duty to show a meritorious defense or claim should relief be granted. "'Meritorious,' in this context, refers to the substantive merits of the underlying claim." *Meyer v. Geyman*, Wood App. No. WD-07-018, 2007-Ohio-5474, ¶13. Appellant failed to allege in his Civ.R. 60(B) motion any meritorious defense or claim to present if relief were granted. Appellant's motion was therefore deficient on its face. See *Servpro of Hancock Cty. v. Gilbert*, Summit App. No. 22442, 2005-Ohio-4089, ¶17. It follows the trial court erred in addressing the merits of appellant's PCR petition when it denied appellant's Civ.R. 60(B) motion.

{¶22} Notwithstanding the trial court's error, we find the court did not abuse its discretion in denying appellant's Civ.R. 60(B) motion. It is well-established that an appellate court will not reverse a judgment that is based on erroneous reasoning if that judgment is otherwise correct, that is, it achieves the right result for the wrong reason. See *State v. Gray*, Butler App. No. CA2010-03-064, 2011-Ohio-666. Although the trial court erred in denying appellant's Civ.R. 60(B) motion after addressing the merits of his PCR petition, we find that denial was the right result because appellant failed to allege a meritorious defense or claim in his Civ.R. 60(B) motion. See *State v. Payton* (1997), 124 Ohio App.3d 552.

{¶23} Appellant's three assignments of error are accordingly overruled.

{¶24} Judgment affirmed.

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