

[Cite as *State v. Soulivong*, 2011-Ohio-3601.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	Nos. 11AP-12
	:	(C.P.C. No. 07CR-256)
Plaintiff-Appellee,	:	11AP-13
	:	(C.P.C. No. 07CR-333)
v.	:	11AP-14
	:	(C.P.C. No. 07CR-1034)
Khemphone Soulivong,	:	11AP-15
	:	(C.P.C. No. 07CR-1088)
Defendant-Appellant.	:	
	:	(REGULAR CALENDAR)
	:	

D E C I S I O N

Rendered on July 21, 2011

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

Khemphone Soulivong, pro se.

APPEALS from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} In these consolidated cases, defendant-appellant, Khemphone Soulivong, appeals from judgments of the Franklin County Court of Common Pleas denying his petitions for postconviction relief. Because appellant's petitions were untimely, we affirm those judgments.

{¶2} In 2007, appellant was named as a defendant in four different indictments. Those indictments alleged that appellant committed a number of criminal offenses: rape in violation of R.C. 2907.02, burglary in violation of R.C. 2911.12, receiving stolen

property in violation of R.C. 2913.51, failure to comply with an order or signal of a police officer in violation of R.C. 2921.331, carrying a concealed weapon in violation of R.C. 2923.12, and improperly handling a firearm in a motor vehicle in violation of R.C. 2923.16. Appellant initially entered not guilty pleas to all of the charges.

{¶3} However, on August 7, 2007, appellant withdrew his previously entered not guilty pleas and pled guilty to various offenses in each of these cases. The trial court accepted appellant's guilty pleas in all of the cases, found him guilty, and sentenced him in all of the cases by judgment entries filed on August 8, 2007. Appellant did not timely appeal his convictions. This court subsequently denied appellant leave to appeal his convictions pursuant to App.R. 5(A).

{¶4} On July 7, 2010, appellant filed petitions for postconviction relief in each of these cases in the trial court. The trial court denied the petitions because they were untimely and barred by res judicata.

{¶5} Appellant now appeals and assigns the following errors:

I. PETITIONER WAS DENIED HIS SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHTS WHEN THE COURT DID NOT HONOR ORIGINAL PLEA AGREEMENT.

II. TRIAL COURT ERRED TO THE PREJUDICE OF THE DEFENDANT WHEN IT ALLOWED ILLEGALLY ALTERED PLEA AGREEMENT TO STAND.

III. APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL UNDER ARTICLE I SECTION 10 OF THE OHIO CONSTITUTION AND THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

{¶6} Appellant's assignments of error do not address the timeliness of his petitions, which is a jurisdictional issue. The state asserts that the trial court properly denied appellant's petitions because they were untimely. We agree.

{¶7} R.C. 2953.21 sets forth the requirements for filing a petition for postconviction relief. Specifically, 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.

{¶8} Pursuant to this statute, appellant had to file his postconviction petitions no later than 210 days after August 8, 2007, the date the trial court filed its judgment entry of sentence and conviction. That date was on or around March 5, 2008. Appellant did not file his petitions until July 7, 2010. Therefore, appellant's petitions were untimely.

{¶9} A trial court lacks jurisdiction to entertain an untimely petition for postconviction relief unless 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 (citing *State v. Backus*, 10th Dist. No. 06AP-813, 2007-Ohio-1815, ¶5).

{¶10} Appellant has made no attempt to argue that any of the exceptions to the jurisdictional bar apply to his petition. With regard to R.C. 2953.23(A)(1), appellant has not alleged 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 his case. Lastly, appellant has not alleged that DNA results establish his actual innocence. R.C. 2953.23(A)(2).

{¶11} Because appellant failed to establish the applicability of an exception that would allow the trial court to consider his untimely petitions, the trial court lacked jurisdiction to entertain his petitions for postconviction relief. *State v. Satterwhite*, 10th Dist. No. 10AP-78, 2010-Ohio-3486, ¶10; *State v. Russell*, 10th Dist. No. 05AP-391, 2006-Ohio-383, ¶10. Accordingly, the trial court did not err in denying appellant's petitions, although technically the petitions should have been dismissed for lack of jurisdiction. *Satterwhite* at ¶10.

{¶12} Our disposition of the jurisdictional issue renders moot appellant's assignments of error, which addresses the merits of his petitions. *Hollingsworth* at ¶11; *State v. Elkins*, 10th Dist. No. 10AP-6, 2010-Ohio-4605, ¶17. Accordingly, we affirm the judgments of the Franklin County Court of Common Pleas.

Judgments affirmed.

BRYANT, P.J., and CONNOR, J., concur.
