

[Cite as *State v. Haschenburger*, 2009-Ohio-6527.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	
PLAINTIFF-APPELLEE,	)	
	)	
VS.	)	CASE NO. 08-MA-223
	)	
WILLIAM HASCHENBURGER,	)	OPINION
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from Court of Common Pleas of Mahoning County, Ohio Case No. 05CR00340
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JUDGMENT:	Affirmed
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APPEARANCES:	
For Plaintiff-Appellee	Paul Gains Prosecutor Gabriel M. Wildman Assistant Prosecutor 21 W. Boardman St. 6 <sup>th</sup> Floor Youngstown, Ohio 44503-1426

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JUDGES:

Hon. Gene Donofrio  
Hon. Joseph J. Vukovich  
Hon. Cheryl L. Waite

Dated: December 10, 2009

[Cite as *State v. Haschenburger*, 2009-Ohio-6527.]  
DONOFRIO, J.

{¶1} Defendant-appellant William Haschenburger appeals the decision of the Mahoning County Common Pleas Court denying his postconviction relief petition.

{¶2} Haschenburger was arrested for raping an underage teenage girl multiple times from 2000-2003. The Mahoning County Grand Jury indicted Haschenburger on ten counts of rape in violation of R.C. 2907.02(A)(2). Haschenburger pleaded not guilty and the case proceeded to a jury trial. The jury convicted Haschenburger on all counts. Haschenburger was sentenced to the maximum consecutive sentences for a total of 100 years.

{¶3} This court affirmed nine of the rape convictions, but vacated the tenth for lack of sufficient evidence. See *State v. Haschenburger*, 7th Dist. No. 05 MA 192, 2007-Ohio-1562, appeal not accepted for review by 115 Ohio St.3d 1409, 2007-Ohio-4884, 873 N.E.2d 1315. This court also vacated the sentences for the remaining nine convictions, and remanded for resentencing pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 270. *Id.*

{¶4} On November 2, 2007, the trial court resentenced Haschenburger to 90 years, the maximum consecutive sentences on the remaining nine counts.

{¶5} Haschenburger appealed his resentencing decision to this court and on December 20, 2008, the sentence was affirmed. See *State v. Haschenburger*, 7th Dist. No. 07-MA-207, 2008-Ohio-6970.

{¶6} On September 10, 2008, Haschenburger filed a petition for postconviction relief. On October 2, 2008, plaintiff-appellee, State of Ohio, filed a motion for judgment on the pleadings, a motion to dismiss, and an answer. On October 6, 2008, the trial court filed a judgment entry sustaining the state's motion. From that denial of the petition for postconviction relief, Haschenburger timely appeals.

{¶7} Haschenburger's first assignment of error states:

{¶8} "The trial court erred in dismissing appellant's petition as untimely because the petition was filed within 180 days of the transmission of the record during a direct appeal."

**{¶9}** Petitions for post-conviction relief are governed by R.C. 2953.21 and R.C. 2953.23. Under R.C. 2953.21, relief from a judgment or sentence is available for a person convicted of a criminal offense who shows that “there was such a denial or infringement of the person’s rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States.”

**{¶10}** At issue here is the timeliness of Haschenburger’s petition. Concerning timeliness and subject to certain exceptions set forth in R.C. 2953.23, the relevant portion of R.C. 2953.21 provides that a petition for post-conviction relief “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[.]” R.C. 2953.21(A)(2).

**{¶11}** If a postconviction relief petition is filed beyond the 180-day time limitation or the petition is a second or successive petition for postconviction relief, R.C. 2953.23(A) precludes the court from entertaining the petition unless: (1) the petitioner shows that he was unavoidably prevented from discovering the facts upon which his claim for relief is based, or (2) after the 180-day time period expired, the United States Supreme Court recognized a new federal or state right that applies retroactively to the petitioner and is the basis of his claim for relief. R.C. 2953.23(A)(1)(a). The petitioner must then show “by clear and convincing evidence that, but for constitutional error at trial, no reasonable fact finder would have found [him] guilty of the offense of which [he] was convicted.” R.C. 2953.23(A)(1)(b).

**{¶12}** Unless the defendant makes the showings required by R.C. 2953.23(A), the trial court lacks jurisdiction to consider either an untimely or a second or successive petition for postconviction relief. *State v. Palmer*, 7th Dist. No. 08 JE 18, 2009-Ohio-1018, ¶11; *State v. Christian*, 7th Dist. No. 06 MA 167, 2007-Ohio-3336, ¶9.

**{¶13}** In this case, Haschenburger did not file his petition for postconviction relief until after his second appeal following his November 2, 2008 resentencing hearing. Haschenburger failed to allege any of the specifically enumerated

timeliness exceptions under R.C. 2953.23. Instead Haschenburger argues that his subsequent appeal was a direct appeal and, thus, timely under R.C. 2953.21(A)(2).

{¶14} Thus, the central issue of this case is whether a subsequent appeal following a vacated sentence is a “direct appeal” for purposes of the timeliness requirement set forth in R.C. 2953.21. R.C. 2953.21 does not specifically speak to this issue. However, there is guidance in case law addressing the 180-day time limit in the context of delayed appeals and cases involving more than one appeal or reopened appeals.

{¶15} This court, as well as the Fifth, Eighth, and Tenth Appellate Districts, have confronted the issue concerning time extensions for filing a petition for postconviction relief after a delayed appeal. In *State v. Price* (Sept. 29, 1998), 10th Dist. No. 98-AP-80, the Tenth District first addressed the issue by stating that extending the time for filing a postconviction relief petition based upon a delayed appeal would nullify the obvious intent of the General Assembly to place time limits on these petitions. The court also noted that it was unreasonable to give a defendant, who neglects to timely file a direct appeal, more time for filing his postconviction relief petition than a defendant who timely files his direct appeal. *Id.* See, also, *State v. Bird* (2000), 138 Ohio App.3d 400, 741 N.E.2d 560, 561-562 (reaffirming that a delayed appeal is different from the “direct appeal” contemplated in the postconviction relief statute and thus does not extend the time for filing a postconviction relief petition).

{¶16} The Fifth District agreed that the time for filing a petition for postconviction relief does not begin to run from the time the trial transcript is filed in the delayed appeal; but, rather, it begins to run when the time for filing a timely direct appeal expires. *State v. Johnson* (Apr. 21, 1999), 5th Dist. No. CT-98-29. See, also, *State v. Godfrey* (Feb. 28, 2000), 5th Dist. No. 99-CA-95 (where the Fifth District used the reasoning in *Price* to conclude that a reopened appeal does not extend the time limit for filing for postconviction relief).

{¶17} Finally, both the Eighth District and this court favorably cited *Price* and *Johnson* and similarly concluded that the filing of the transcript for the delayed appeal does not affect the time for filing a petition for postconviction relief. *State v. Fields* (1999), 136 Ohio App.3d 393, 396-397, 736 N.E.2d 933, *State v. Johnson* (2001), 144 Ohio App.3d 222, 225, 759 N.E.2d 889 (7th Dist.).

{¶18} Similarly, courts have applied this same sentiment for strict adherence to the 180-day time limit to cases involving more than one appeal or reopened appeals. In *State v. Laws*, 10th Dist. No. 04AP-283, 2004-Ohio-6446, the court faced a defendant's petition for postconviction relief filed after he was resentenced pursuant to a remand in his first appeal. In *Laws*, the court concluded that "the time limits of R.C. 2953.21(A)(2) began to run at the time defendant's transcript was filed in his first appeal. The transcript in defendant's initial appeal was filed on January 28, 1998 and \* \* \* [h]is petition therefore was due on July 27, 1998." Id. at ¶7. The court held that since the defendant filed his petition for postconviction relief on April 1, 2002, his petition was untimely; therefore, the trial court properly recognized it lacked jurisdiction to entertain defendant's untimely petition unless defendant satisfied the mandatory jurisdictional requirements set forth in R.C. 2953.23(A). Id. The court reasoned that "if we were to determine that the time for filing a defendant's post-conviction did not begin to run until the last of the direct appeals from the trial court's judgments, the time for filing post-convictions petitions would be extended 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." Id. at ¶6.

{¶19} Similarly, in *State v. Casalicchio*, a more recent case in which the defendant was resentenced pursuant to *Foster*, the court held the defendant's petition for postconviction relief to be untimely. *State v. Casalicchio*, 8th Dist. No. 89555, 2008-Ohio-2362. In *Casalicchio*, the defendant appealed his conviction and sentence. The court held that the time limitation period for postconviction relief began to run when the transcript was filed. Id. The court went on to state that when the trial court imposed the defendant's "second" sentence at the resentencing

hearing, “it [did] not serve to restart the clock for postconviction relief purposes as to any claims attacking his underlying conviction.” *Id.* quoting *State v. Gross*, 5th Dist. No. CT2006-0006, 2006-Ohio-6941, at ¶34. See, also, *State v. Simmons*, 11th Dist. No. 2006-L-265 and 2006-L-276, 2007-Ohio-4965.

{¶20} In support of his position, Haschenburger cites *State v. Roberts*, 11th Dist. No. 2005-T-0034, 2007-Ohio-5616. *Roberts* was convicted of two counts of aggravated murder, one count of aggravated burglary, and one count of aggravated robbery. She was sentenced to death for the aggravated murder and two separate ten-year sentences for the remaining two offenses. She immediately appealed to the Ohio Supreme Court. While that appeal was pending, she filed original and amended petitions for postconviction relief which were dismissed by the trial court. She appealed the dismissal of her petitions to the Eleventh District Court of Appeals. During the pendency of the postconviction appeal in the Eleventh District, the Ohio Supreme Court rendered its decision upholding her convictions but vacating the death sentence and remanding to the trial court for further proceedings.

{¶21} In considering the postconviction appeal, the Eleventh District determined that the Ohio Supreme Court’s decision vacating Robert’s death sentence “had the effect of nullifying all of the proceedings in regard to her original and amended postconviction petitions” including the trial court’s dismissal of those petitions. *Id.* at ¶7. Thus, the court concluded that the appeal was no longer properly before it because the appealed judgment was not a final appealable order. *Id.*

{¶22} Haschenburger’s reliance on *Roberts* is misplaced. *Roberts* had nothing to do with whether the defendant’s petition for postconviction relief had been timely filed under R.C. 2953.21. Moreover, *Roberts* dealt with multiple, *simultaneous* appeals where a superior court’s decision had the effect of nullifying the jurisdiction of a lower court. This case involves a *subsequent* appeal of a resentencing due to the original sentence being reversed and vacated. Haschenburger’s argument raises the more pertinent question of when a “judgment of conviction or adjudication” becomes final for purposes of R.C. 2953.21(A)(2).

{¶23} The answer to that question can be found in the line of Ohio Supreme Court cases dealing with whether certain sentencing errors render the sentence “void” or “voidable.” In *Bezak*, the Court held that the failure of a sentencing court to inform the defendant about the imposition of postrelease control at the sentencing hearing made the sentence void. *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, at ¶12. It reasoned that “[t]he effect of determining that a judgment is void is well established. It is as though such proceedings had never occurred; the judgment is a mere nullity and the parties are in the same position as if there had been no judgment.” *Id.*, quoting *Romito v. Maxwell* (1967), 10 Ohio St.2d 266, 227 N.E.2d 223, 226.

{¶24} Subsequently, in *Payne*, the Court explained the difference between a sentence that is “void” from one that is “voidable.” *State v. Payne*, 114 Ohio St.3d. 502, 2007-Ohio-4642, 873 N.E.2d 306. The *Payne* court held, “[a] void sentence is one that a court imposes despite lacking subject-matter jurisdiction or the authority to act. \* \* \* Conversely, a voidable sentence is one that a court has jurisdiction to impose, but was imposed irregularly or erroneously.” *Id.* at ¶27. In fact, as it relates to sentences affected by the *Foster* decision, the Court specifically held that pre-*Foster* sentences imposed after judicial fact-finding and falling within the statutory range were merely voidable. *Id.* at ¶29.

{¶25} As the Eighth District observed in *State v. Casalicchio*, 8th Dist. No. 89555, 2008-Ohio-2362, *Payne* implicitly overruled *Bezak*. The court reasoned that *Payne* indicated the Supreme Court’s retreat from *Bezak* when it had labeled a sentence “void,” since the trial court had the authority to impose the sentence, but improperly exercised that authority. *Id.* In *Casalicchio*, the court thus held that a sentence that does not properly include postrelease control is “voidable,” not “void.” *Id.* Therefore, the court concluded that since the defendant’s sentence was not “void” or a “nullity”, it did not restart the clock to file a petition for postconviction relief *Id.* at ¶18.

{¶26} The Ninth District was presented with a case very similar to this one in *State v. O’Neal*, 9th Dist. No. 08CA0028-M, 2008-Ohio-6572. The defendant argued that time for filing his petition should not have begun to run until after his resentencing pursuant to *Foster*. The court rejected that argument relying on *Casalicchio*. The court noted that prevailing case law indicates that the time limit for the filing of a postconviction relief petition runs from the original appeal of the conviction. *Id.* at ¶12.

{¶27} In sum, we conclude that reversal of a sentence pursuant to *Foster* does not “void” or “nullify” the original “judgment of conviction or adjudication” and, therefore, does not extend the time for filing a petition for postconviction relief which raises issues concerning the defendant’s *conviction*. We find the Tenth District’s reasoning in *Law* persuasive. If we were to determine that the time for filing a defendant’s petition for postconviction relief did not begin to run until the last of the direct appeals from the trial court’s sentence[s], the time for filing postconvictions petitions would be extended well beyond the time limits set forth in R.C. 2953.21(A)(2) to an indeterminate time in the future. Such a finding would render the time requirement meaningless and defeat the intent of the legislature in setting forth such a time requirement.

{¶28} Logic also dictates this result and that is not to say that any postconviction petition following a *Foster* resentencing would be untimely. After a defendant is convicted and sentenced and files a timely notice of appeal, “the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication.” R.C. 2953.21(A)(2). As indicated, from that point in time, the defendant has 180 days to file a petition for postconviction relief in the trial court to raise issues concerning the original conviction and sentence. *Id.* If they do not and their sentence is subsequently reversed in the first, direct appeal and the defendant is resentenced, the defendant is obviously entitled to appeal that resentencing. Of course, the “trial transcript” is *again* “filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication.” R.C. 2953.21(A)(2). But, this time the

only new materials contained in the “trial transcript” usually relate solely to the resentencing. In fact, oftentimes, the “trial transcript” that is filed in the court of appeals following a resentencing includes only those materials relating to the resentencing. It does not include materials relating to the defendant’s original conviction and sentence. In this instance, if they so choose and have not previously filed a petition, the defendant may file within 180 days of the filing of the “trial transcript,” a petition for postconviction relief to raise any issues concerning *only* the *resentencing*. In this case, Haschenburger’s postconviction petition was directed at alleged trial errors (as explained further under his third assignment of error), not the resentencing. Therefore, those errors should have been raised in a timely petition following his original conviction and sentence.

{¶29} Accordingly, Haschenburger’s first assignment of error is without merit.

{¶30} Haschenburger’s second assignment of error states:

{¶31} “The trial court erred and denied Appellant due process when it ruled on the State’s motion to dismiss and/or motion for judgment on the pleadings without affording Appellant an opportunity to reply.”

{¶32} Haschenburger argues the court denied him of his right to due process because the trial court granted the state’s motion to dismiss on the pleadings without affording him adequate time to respond. While it is true that the trial court ruled on the state’s motion after only four days, the timing of the trial court’s decision did not prejudicially affect Haschenburger’s due process rights. A postconviction petition is a special civil action governed exclusively by statute, thus a petitioner receives no more rights than those granted by the statute. *State v. Calhoun* (1999), 86 Ohio St.3d 279, 281, 714 N.E.2d 905.

{¶33} Haschenburger argues that Ohio Civ.R. 6(D) and Mahoning C.P. Local R. 6(A) should govern the proceedings with regard to his postconviction petition. The Ohio Rules of Civil Procedure and the Local Rules do apply in postconviction proceedings, but only to the extent that they are not inconsistent with R.C. 2953.21. *State v. Peterson*, 7th Dist. No. 08 MA 102, 2009-Ohio-1504, at ¶15. In the context

of a postconviction petition pursuant to R.C. 2953.21, “[a] trial court has the discretion to dismiss a petition for post-conviction relief *without any response from the State or the Petitioner* if ‘the petition fails to set forth any substantive ground upon which relief can be granted.’” (Emphasis added.) *Peterson* at ¶10, quoting *In re J.B.*, 12th Dist. No. CA-2005-06-176, 2006-Ohio-2715, at ¶48. In other words, if the petition is meritless on its face, the trial court may dismiss it without reviewing the record, and without waiting for a response from either the petitioner or the state. *State v. McNeill* (2000), 137 Ohio App.3d 34, 738 N.E.2d 23. In this case, Haschenburger’s petition was untimely on its face and, thus, the trial court was not required to wait for his reply to the state’s motion to dismiss.

{¶34} Accordingly, Haschenburger’s second assignment of error is without merit.

{¶35} Haschenburger’s third assignment of error states:

{¶36} “The trial court erred in its substantive reasons for the [sic] denying the petition, thus denying Appellant meaningful access to the Courts of this State.”

{¶37} Haschenburger argues that the trial court improperly denied the petition without a hearing, finding that the petition failed to state substantive grounds for relief, when both claims in the petition did indeed state a constitutional violation. Under Haschenburger’s first assignment of error, we found that his petition was untimely. Since the petition was untimely, the trial court was without jurisdiction to address the merits of the petition. Consequently, this assignment of error directed at the substantive merits of Haschenburger’s petition is rendered moot and we need not address it. App.R. 12(A)(1)(c). However, even assuming his petition was timely, this assignment of error would still fail on its merits.

{¶38} As indicated, R.C. 2953.21 governs postconviction proceedings. R.C. 2953.21(C) provides in part:

{¶39} “Before granting a hearing on a petition filed under division (A) of this section, the court shall determine whether there are substantive grounds for relief. In making such a determination, the court shall consider, in addition to the petition, the

supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript."

{¶40} In *State v. Calhoun* (1999), 86 Ohio St.3d 279, 282-83, 714 N.E.2d 905, the Ohio Supreme Court held:

{¶41} "According to the postconviction relief statute, a criminal defendant seeking to challenge his conviction through a petition for postconviction relief is not automatically entitled to a hearing. *State v. Cole* (1982), 2 Ohio St.3d 112, 2 OBR 661, 443 N.E.2d 169. Before granting an evidentiary hearing on the petition, the trial court shall determine *whether there are substantive grounds for relief* (R.C. 2953.21[C]), i.e., whether there are grounds to believe that 'there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States.' (Emphasis added.) R.C. 2953.21(A)(1)."

{¶42} The Court also went on to hold that it is not unreasonable to require the defendant to show in his petition for postconviction relief that the alleged errors resulted in prejudice before a hearing is scheduled. *Id.* at 283, 714 N.E.2d 905. Therefore, before a hearing is granted, the petitioner bears the initial burden to submit evidentiary documents containing sufficient operative facts to demonstrate the merit of his claims.

{¶43} Thus, the trial court must determine if a hearing is warranted based upon the petition, supporting affidavits, and all of the files and records pertaining to the proceedings. *State v. Pierce* (1998), 127 Ohio App.3d 578, 586, 713 N.E.2d 498; *State v. Smith* (Dec. 11, 1997), 7th Dist. No. 96-JE-44. A trial court's decision regarding whether or not to conduct an evidentiary hearing in postconviction matters is governed by the "abuse of discretion" standard. *Smith*, 7th Dist. No. 96-JE-44. An abuse of discretion connotes conduct which is unreasonable, arbitrary, or

unconscionable. *State ex rel. Richard v. Seidner* (1996), 76 Ohio St.3d 149, 151, 666 N.E.2d 1134.

{¶44} Evidence attached to a petition for postconviction relief must meet “some threshold standard of cogency.” *State v. Lawson* (1995), 103 Ohio App.3d 307, 315, 659 N.E.2d 362. That threshold is not met by evidence which is “only marginally significant and does not advance the petitioner’s claim beyond mere hypothesis and a desire for further discovery.” *Id.* Additionally, “where a petitioner relies upon affidavit testimony as the basis of entitlement to postconviction relief, and the information in the affidavit, even if true, does not rise to the level of demonstrating a constitutional violation, then the actual truth or falsity of the affidavit is inconsequential.” *State v. Calhoun* (1999), 86 Ohio St.3d 279, 284, 714 N.E.2d 905.

{¶45} Even when affidavits are filed in support of the petition, although a trial court “should give [them] due deference,” it may also “judge their credibility in determining whether to accept the affidavits as true statements of fact.” *Id.* at 284, 714 N.E.2d 905. In assessing the credibility of affidavit testimony, the consideration should be given to “all relevant factors.” *Id.* Among those factors are (1) whether the judge reviewing the postconviction relief petition also presided at the trial, (2) whether multiple affidavits contain nearly identical language, or otherwise appear to have been drafted by the same person, (3) whether the affidavits contain or rely on hearsay, (4) whether the affiants are relatives of the petitioner, or otherwise interested in the success of the petitioner’s efforts, and (5) whether the affidavits contradict evidence proffered by the defense at trial. Moreover, a trial court may find sworn testimony in an affidavit to be contradicted by evidence in the record by the same witnesses, or to be internally inconsistent, thereby weakening the credibility of that testimony. *Id.* Depending on the entire record, one or more of these or other factors may be sufficient to justify the conclusion that an affidavit asserting information outside the record lacks credibility. *Id.* at 285, 714 N.E.2d 905.

{¶46} When applying the above to the present case, it is evident that out of the three affidavits submitted in support of Haschenburger’s postconviction petition,

one was from Haschenburger himself and the other two were from close relatives, his brother and sister-in-law. The affidavit from Haschenburger himself is considered self-serving and therefore it is reasonable to afford it less credibility. This court has recognized that evidence outside of the record in the form of a petitioner's own self-serving affidavit alleging a constitutional deprivation is insufficient to compel a hearing. *State v. Dukes* (Feb. 8, 1999), 7th Dist. No. 96-CA-127, citing *State v. Combs* (1994), 100 Ohio App.3d 90, 98, 652 N.E.2d 205. In addition, the affidavits from Haschenburger's brother and sister-in-law were based, in large part, on out-of-court statements made by Haschenburger himself. Haschenburger's sister-in-law stated that Haschenburger told her in jailhouse private meetings that he wanted to testify. The sister-in-law also stated she "overheard William Haschenburger inform his counsel, Sarah Kavoor, at court that he wanted to testify on his own behalf." (Karen Haschenburger Affidavit.) In addition, Haschenburger's brother stated that Haschenburger called him from the county jail and expressed his desire to testify. (Roy Haschenburger Affidavit.) Since these affidavits were based on out-of-court statements, they contain and rely on hearsay.

{¶47} Beyond the affidavits, Haschenburger failed to meet his burden of asserting facts which would entitle him to relief. In his first claim, Haschenburger argued that the trial court took away his rights to testify on his own behalf. On occasions when a defendant has acquiesced in their counsel's decision not to place them on the stand, it has been held that they cannot later assert that their right to testify has been violated. *State v. McCaleb*, 11th Dist. No. 2002-L-157, 2004-Ohio-5940, ¶94; *State v. Ashley* (June 14, 2000), 4th Dist. No. 99 CA 2514; *State v. Jones* (Sept. 30, 1993), 8th Dist. No. 63836. Furthermore, the court requires that the petitioner take some overt action to bring to the court's attention his desire to testify. *Ashley*, supra. Here, Haschenburger's petition contains no indication of an overt action to bring to the court's attention his desire to testify.

{¶48} Haschenburger's second claim involves an alleged disclosure of confidential documents. Other than references to "documents which were harmful to

the accused,” Haschenburger’s petition for postconviction relief offers nothing to explain what these documents were, let alone how they were confidential. Therefore, Haschenburger did not demonstrate any substantive grounds for relief.

{¶49} Consequently, the court did not err when it used its discretion in determining that Haschenburger produced no sufficient credible evidence to demonstrate that he suffered a violation of his constitutional rights.

{¶50} Accordingly, Haschenburger’s third assignment of error is without merit.

{¶51} The judgment of the trial court is hereby affirmed.

Vukovich, P.J., concurs.

Waite, J., concurs.