

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 09AP-132
	:	(C.P.C. No. 99CR-11-6380)
Tyson Brooks,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on July 21, 2009

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Tyson Brooks, pro se.

APPEAL from the Franklin County Court of Common Pleas.

TYACK, J.

{¶1} In July 2000, Tyson Brooks entered guilty pleas to aggravated murder and aggravated robbery, each with a gun specification.

{¶2} In November 2008, Brooks filed a motion entitled "Motion Seeking Notice of Plain Error Pursuant to Criminal Rule 52(B)." The trial court denied relief.

{¶3} Brooks has now pursued a direct appeal, assigning two errors for our consideration:

I. DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE COURT DENIED HIM THE RIGHT TO SPEEDY TRIAL.

II. DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT DUE TO TRIAL COUNSEL'S PREJUDICIAL ERRORS.

{¶4} The Ohio Rules of Criminal Procedure do not provide for the filing of motions in criminal cases over eight years after a case is completed with a guilty plea and the defendant sentenced. Ohio law does permit the filing of a petition for post-conviction relief after a case is completed in the trial court, but only on select, constitutional issues and only within a fairly narrow time frame. See R.C. 2953.21 and 2953.23.

{¶5} Brooks did not demonstrate to the trial court and has not demonstrated to us any justification for his delay in filing an action which amounts to a petition for post-conviction relief. For this reason alone, the trial court was correct to deny relief.

{¶6} Several other reasons also exist for the denial of relief. By entering guilty pleas, Brooks gave up or waived any rights he had to contest the promptness of his trial under R.C. 2945.71 et seq. The 270-day time period is extended by a wide variety of actions initiated by or on behalf of a criminal defendant. Several of the actions which extend the time for trial for a criminal defendant are applicable. As a result, neither counsel for Brooks nor his trial court judge erred by pursuing these issues before accepting the guilty pleas.

{¶7} Nothing in the record before us suggests that defense counsel in Brooks' case was less than effective.

{¶8} Both assignments of error in Brooks' initial brief are overruled.

{¶9} Brooks has filed a supplemental brief which contains a second "Assignment of Error No. II." The new assignment of error reads:

THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT SENTENCED DEFENDANT ON AN INDICTMENT THAT FAILS TO PRESENT THE ESSENTIAL ELEMENTS OF THE CHARGE.

{¶10} This new assignment of error does not remedy the problem related to the eight-year delay in the filing of the motion/petition for post-conviction relief.

{¶11} Further, the fact Brooks entered a guilty plea removes or waives defects in the initial charging document or indictment.

{¶12} The supplemental assignment of error is also overruled.

{¶13} All assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT and SADLER, JJ., concur.
