

[Cite as *State v. Satterwhite*, 2010-Ohio-3486.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 10AP-78 (C.P.C. No. 03CR-7642)
	:	
Clifton A. Satterwhite,	:	(ACCELERATED CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on July 27, 2010

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

Clifton A. Satterwhite, pro se.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, Clifton A. Satterwhite, appeals from a judgment of the Franklin County Court of Common Pleas denying his petition for postconviction relief. Because appellant's petition was untimely, we affirm.

{¶2} In July 2004, a jury found appellant guilty of a number of charges of robbery, aggravated robbery, and kidnapping, all with firearm specifications, arising out of

the robbery of a car parts store. This court affirmed those convictions. *State v. Satterwhite*, 10th Dist. No. 04AP-964, 2005-Ohio-2823.¹

{¶3} On August 18, 2009, appellant filed in the trial court a petition for post-conviction relief pursuant to R.C. 2953.23. The petition asserted that his indictment was defective because it failed to allege a mens rea element for each charge. On January 7, 2010, the trial court denied appellant's petition because, among other reasons, it was untimely.

{¶4} Appellant appeals and assigns the following error:

DEFENDANT'S INDICTMENT FAILED TO INCLUDE THE
MENS REA ELEMENT.

{¶5} Appellant's assignment of error does not address the timeliness of his petition, which is a jurisdictional issue. The state asserts that the trial court properly denied appellant's petition because it was untimely. We agree.

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

¹ The Supreme Court of Ohio subsequently reversed appellant's prison sentences. *In re Ohio Criminal Sentencing Statutes Cases*, 109 Ohio St.3d 313, 2006-Ohio-2109, ¶82. On remand, the trial court resentenced appellant to the same sentences. This court affirmed those sentences. *State v. Satterwhite*, 10th Dist. No. 06AP-666, 2007-Ohio-798.

{¶7} Pursuant to this statute, appellant had to file his postconviction petition no later than 180 days after December 6, 2004, the date the trial transcript was filed in his direct appeal of the judgment of conviction to this court. That date was on or around June 6, 2005. Appellant did not file his petition until August 18, 2009. Therefore, appellant's petition was untimely.

{¶8} 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).

{¶9} 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. To the extent appellant relies on the rationale of *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, that is not a decision of the United States Supreme Court. Nor does that case apply retroactively. *Hollingsworth* at ¶9 (citing *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749, ¶3). Lastly, appellant has not alleged that DNA results establish his actual innocence. R.C. 2953.23(A)(2).

{¶10} Because appellant failed to establish the applicability of an exception that would allow the trial court to consider his untimely petition, the trial court lacked jurisdiction to entertain his petition for postconviction relief. *State v. Dugger*, 10th Dist. No. 06AP-887, 2007-Ohio-1243, ¶10; *State v. Russell*, 10th Dist. No. 05AP-391, 2006-

Ohio-383, ¶10. Accordingly, the trial court did not err in denying appellant's petition, although technically, the petition should have been dismissed for lack of jurisdiction. *State v. Hamilton*, 10th Dist. No. 03AP-852, 2004-Ohio-2573, ¶9.

{¶11} Our disposition of the jurisdictional issue renders moot appellant's assignment of error, which addresses the merits of his petition. *Hollingsworth* at ¶11. Accordingly, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

SADLER and FRENCH, JJ., concur.
