

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-190136
		C-190144
Plaintiff-Appellee,	:	TRIAL NO. B-1602627
vs.	:	
		<i>JUDGMENT ENTRY.</i>
DONALD DAWSON-DURGAN,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Donald Dawson-Durgan advances a single assignment of error on appeal, challenging the Hamilton County Common Pleas Court's judgment overruling his postconviction petition. We affirm the court's judgment as modified to dismiss the petition for lack of jurisdiction.

After a jury trial, Mr. Dawson-Durgan was convicted of aggravated murder and aggravated robbery (both accompanied by firearm specifications), as well as having weapons while under a disability. He timely appealed, challenging, among other things, his convictions, however this court affirmed the trial court's judgment. See *State v. Durgan*, 1st Dist. Hamilton No. C-170148, 2018-Ohio-2310, ¶ 1. In the wake of our decision, Mr. Dawson-Durgan filed pro se a postconviction petition pursuant to R.C. 2953.21 and 2953.23. In his petition, he asserted his due process rights were violated when, during his trial, a juror saw him in handcuffs, and challenged the effectiveness of his trial counsel when his counsel waived his appearance at various proceedings below. In turn, the trial court, without holding an evidentiary hearing or offering findings of fact and conclusions of law, overruled his petition. Mr. Dawson-Durgan, in a single

assignment of error, now challenges the trial court's entry overruling his petition, asserting the court erred when it both failed to hold a hearing prior to overruling his petition and to provide findings of fact and conclusions of law in its entry.

Although R.C. 2953.21 permits a petitioner's collateral attack upon a judgment of conviction, here the trial court lacked jurisdiction to review Mr. Dawson-Durgan's petition. Pursuant to R.C. 2953.21, a petitioner must file the petition no later than 365 days after the trial transcript was filed with the court of appeals in the direct appeal. *See* R.C. 2953.21(A)(2). Mr. Dawson-Durgan missed this deadline by a couple of months, with the trial transcripts filed on September 28, 2017, and his petition filed on December 7, 2018. Because a trial court may not entertain an untimely petition, the court lacked jurisdiction to review Mr. Dawson-Durgan's petition, unless he demonstrated that one of the exceptions in R.C. 2953.23(A) applied. *See State v. Apanovitch*, 155 Ohio St.3d 358, 2018-Ohio-4744, 121 N.E.3d 351, ¶ 38 ("By providing that a court 'may not entertain' an untimely or successive postconviction petition except in limited circumstances, R.C. 2953.23(A) plainly prohibits a court from hearing and deciding on the merits a petition that does not meet one of the exceptions."). He failed to establish either exception under R.C. 2953.23(A) existed here. Consequently, the trial court lacked jurisdiction to entertain either of Mr. Dawson-Durgan's claims asserted in his petition.

Further, because Mr. Dawson-Durgan's petition was untimely, the trial court was under no obligation to issue findings of fact and conclusions of law. *See State ex rel. George v. Burnside*, 118 Ohio St.3d 406, 2008-Ohio-2702, 889 N.E.2d 533, ¶ 6 ("[Trial court] has no duty to issue findings of fact and conclusions of law on successive or untimely petitions for postconviction relief."). Similarly, since the court lacked jurisdiction, no duty existed for the trial court to hold an evidentiary hearing. *See State v. McGlothin*, 1st Dist. Hamilton No. C-180498, 2019-Ohio-4858, ¶ 22, citing R.C.

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2953.21(D) and 2953.23(A) (“Because the common pleas court had no jurisdiction to entertain [petitioner’s] postconviction petition, the petition was subject to dismissal without an evidentiary hearing.”); *State v. Battin*, 10th Dist. Franklin No. 17AP-911, 2018-Ohio-2533, ¶ 19 (“[B]ecause the trial court lacked jurisdiction to consider [petitioner’s] petition, it was not required to hold an evidentiary hearing.”).

Because the trial court lacked jurisdiction to grant Mr. Dawson-Durgan the relief he sought, the court’s entry overruling his petition is appropriately modified to reflect its dismissal. *See* App.R. 12(A)(1)(a). And we affirm the judgment as modified.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., ZAYAS and BERGERON, JJ.

To the clerk:

Enter upon the journal of the court on March 25, 2020,
per order of the court_____.

Presiding Judge