

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

STATE OF OHIO,	:	APPEAL NOS. C-220304
		C-220305
and	:	C-220306
		TRIAL NOS. C-13TRD-12769A
CITY OF CINCINNATI,	:	C-13TRD-12769B
		C-13TRD-12769C
Plaintiffs-Appellees,	:	11TRD-38743
		13TRD-30897A
vs.	:	13TRD-30897B
ANTUAN BURRESS-EL,	:	
Defendant-Appellant.	:	<i>OPINION.</i>

Criminal Appeals From: Hamilton County Municipal Court

Judgments Appealed From Are: Affirmed

Date of Judgment Entry on Appeal: July 21, 2023

*Melissa A. Powers*, Hamilton County Prosecuting Attorney, and *Sean M. Donovan*, Assistant Prosecuting Attorney, for Plaintiff-Appellee State of Ohio,

*Emily Smart Woerner*, City Solicitor, *William T. Horsley*, Chief Prosecuting Attorney, and *Ashton Tucker*, Assistant Prosecuting Attorney, for Plaintiff-Appellee City of Cincinnati,

*Antuan Burress-El*, pro se.

**ZAYAS, Judge.**

{¶1} Defendant-appellant Antuan Burrese-El appeals the judgment of the Hamilton County Municipal Court, entered in each of the above-listed trial numbers, denying his motion “to overturn BMV Citations.” For the following reasons, we affirm.

**Procedural and Factual Background**

{¶2} The record indicates that Burrese-El’s driver’s license had been suspended for failure to pay child support. As a result, in February 2012, Burrese-El was convicted of driving under a financial responsibility law suspension (“FRA suspension”) in violation of R.C. 4510.16 in the case numbered 11TRD-38743, which was prosecuted by plaintiff-appellee the city of Cincinnati. In May 2013, Burrese-El was again convicted of driving under an FRA suspension as well as a safety-restraint violation and driving under suspension in violation of R.C. 4510.11 in the cases numbered C-13TRD-12769A, B, and C, respectively, each prosecuted by plaintiff-appellee the state of Ohio. Lastly, in January 2014, Burrese-El was convicted of driving under an FRA suspension and an improper-lights violation in the cases numbered 13TRD-30897A and B, respectively, each prosecuted by the city. The trial court imposed a fine for each conviction. Because Burrese-El failed to pay these fines, the trial court sent a registration block to the Ohio Bureau of Motor Vehicles (“BMV”).

{¶3} In June 2016, Burrese-El moved to vacate his convictions in each case, noting that his request was “with the agreement of JFS and CSEA to delete all infractions, sanctions, and citations.” The trial court summarily denied the motions. Instead of timely appealing from those judgments, Burrese-El moved this court to file delayed appeals from his judgments of conviction, which this court denied.

{¶4} Four years later, in December 2020, Burrese-El filed a “Motion to Modify Requesting For A Correction Of Records” in each case. In these motions, Burrese-El requested that his convictions be vacated because he had been granted an “injunction” from the Hamilton County Juvenile Court, which he maintains had in

effect retroactively cancelled his child-support obligation or demonstrated that his convictions were based on a child-support obligation that had been wrongfully charged. He attached a copy of the September 2015 judgment entered in his child-support case numbered P96-3052Z, which stated that Burrell-El's child-support arrearage is "found to be \$0 with agreement of the Hamilton County Job and Family Services Child Support Enforcement Agency." The trial court denied Burrell-El's motions in January 2021. Nine months later, we denied Burrell-El's motions seeking leave to file delayed appeals from the trial court's judgments overruling his motions.

{¶5} In May 2022, Burrell-El filed a "Motion for a New Trial to Over Turn BMV Citations" in each case. In his motions, he notes that "it has come to the attention of the BMV that all citations enforced against [Burrell-El] were unofficially done \* \* \* The original cases that created the citation were overturned." In the motions, he requests new trials and that the court vacate the convictions and dismiss the charges because they were based on "unconstitutional actions." In support, he again submits the September 2015 judgment entry from his child-support case numbered P96-3052Z, as well as an entry awarding him a \$3000 judgment against the mother of his child and several documents from an audit of his child-support account.

{¶6} The evidence submitted demonstrated that Burrell-El was ordered to pay child support for one child beginning in 1996. From June 1996 through March 2001, Burrell-El made partial payments towards his child-support obligation. As of March 2001, his arrearage totaled over \$10,000. Sadly, his child died in April 2001. As of the date of the child's death, Burrell-El was no longer charged child support; however, an arrearage remained on the account, which the state continued to attempt to collect. At some point, Burrell-El was awarded a \$3000 judgment against the mother in a wrongful-death action, and that amount was used to offset part of the arrearage owed to her. In April 2015, Burrell-El sought to have the remaining

arrearage amount waived, which the juvenile court granted by entry dated September 2015.

{¶7} Following oral arguments, the trial court denied the motions noting that Burrell-El had made the same arguments in his prior motions to vacate, which the court had overruled. Burrell-El now appeals, asserting in a single assignment of error that the trial court erred in overruling his motion in each case.

**Recast as Civ.R. 60(B) Motions to Vacate**

{¶8} In this appeal, the state and the city (collectively, “the state”) argue that Burrell-El’s motions seeking to overturn his convictions were essentially petitions for postconviction relief because they sought to vacate his convictions on constitutional grounds. Considering Burrell-El’s motions as petitions for postconviction relief under R.C. 2953.21, the state then argues they were untimely. We agree that Burrell-El’s motions were postconviction motions seeking to vacate his convictions but the postconviction relief statutes do not confer jurisdiction over postconviction petitions upon municipal courts, but only upon common pleas courts. *State v. Burner*, 1st Dist. Hamilton No. C-180516, 2020-Ohio-2930, ¶ 7, citing *State v. Cowan*, 101 Ohio St.3d 372, 2004-Ohio-1583, 805 N.E.2d 1085. This then leaves offenders convicted in municipal court without a statutory procedure to seek relief from their convictions. Therefore, this court has held that “because the criminal rules provide no procedure for an offender convicted in municipal court to seek relief from his conviction based on evidence outside the record, Crim.R. 57(B) permits the offender to seek relief under Civ.R. 60(B)(5).” *State v. Smith*, 2016-Ohio-3521, 68 N.E.3d 114, ¶ 19 (1st Dist.). Accordingly, the trial court should have considered Burrell-El’s motions as Civ.R. 60(B)(5) motions to vacate as the motions sought to vacate his convictions on constitutional grounds. *See State v. Bush*, 96 Ohio St.3d 235, 2002-Ohio-3993, 773 N.E.2d 522, ¶ 10 (trial courts may cast irregular motions into whatever category necessary to identify and establish the criteria by which the motion should be judged).

{¶9} It is unclear what criteria the trial court used to evaluate Burrell-El's motions; however, even if the court may have evaluated the motions under the wrong criteria, that error is harmless because the same result would have been reached if the trial court would have analyzed the motions under Civ.R. 60(B)(5). *See State v. Mattachione*, 2d Dist. Greene No. 2004 CA 80, 2005-Ohio-2769, ¶ 11-12.

### **Res Judicata Operates to Bar Motions**

{¶10} “Res judicata bars relitigation of a matter that was raised or could have been raised on direct appeal when a final, appealable order was issued in accordance with the law at the time.” *State v. Griffin*, 138 Ohio St.3d 108, 2013-Ohio-5481, 4 N.E.3d 989, ¶ 3. Here, Burrell-El sought to have his convictions vacated both in 2016 and 2020 based on the same evidence Burrell-El used to support his most recent motions—the September 2015 entry waiving his child-support arrearage. Those motions were denied by final orders entered in 2016 and 2020. But Burrell-El failed to appeal the denial of the 2016 motions and failed to timely appeal the denial of the 2020 motions. If he had, he could have raised the issue of whether the September 2015 entry was sufficient to prove that his convictions had been based on a wrongfully charged child-support debt. Because he did not do so, res judicata operates to bar his most recent motions to vacate. Accordingly, the trial court properly denied his most recent motions.

{¶11} Assuming *arguendo* that res judicata does not apply, Burrell-El's appeals would otherwise fail on the merits. We review a trial court's decision denying a motion to vacate under Civ.R. 60(B)(5) for an abuse of discretion. *Schaefer v. Mazii*, 2019-Ohio-3808, 145 N.E.3d 1048, ¶ 9 (1st Dist.). Here, Burrell-El cannot demonstrate, as he is required to do under Civ.R. 60(B), that he possesses a meritorious defense if the court grants him relief. The evidence he presented to the trial court demonstrated that he was in arrears on his child-support obligation at the time of his convictions for various driving-related offenses. And he presented no evidence

demonstrating that his child-support obligation had been wrongfully charged. At most, the September 2015 entry demonstrates that beginning in September 2015, Burress-El no longer had a child-support debt; not that the state was retroactively cancelling his arrearage or that his arrearage had been based on a wrongfully charged child-support debt. Based on this evidence, we cannot say that the trial court abused its discretion in denying Burress-El's motions to vacate. Accordingly, the single assignment of error is overruled.

{¶12} Finally, we note that while these appeals were under submission, Burress-El moved this court to grant him summary judgment on the merits of his appeals. Burress-El argues that the city failed to properly respond to this court's June 2023 judgment entry, which gave the city, a party who was not properly served with the notices of appeal in these cases, an opportunity to respond to Burress-El's appellate briefs. Burress-El points out that the city's notice of appearance contained the wrong case caption, and the certificate of service did not list Burress-El as being served. However, the city promptly corrected these issues and timely filed its appellate brief and its notice of appearance on July 7, 2023, and served Burress-El with both pleadings via electronic mail the same day. Because the city complied with this court's order and for the reasons discussed above regarding the merits of his appeals, we deny Burress-El's motion for summary judgment.

{¶13} Accordingly, the judgments of the trial court are affirmed.

Judgments affirmed.

**CROUSE, P.J., and KINSLEY, J., concur.**

Please note:

The court has recorded its own entry on the date of the release of this opinion.