

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

STATE OF OHIO,	:	APPEAL NO. C-240470
Plaintiff-Appellee,	:	TRIAL NO. B-0405710
vs.	:	
MALLON ROBERTS,	:	<i>JUDGMENT ENTRY</i>
Defendant-Appellant.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Defendant-appellant Mallon Roberts appeals the judgment of the Hamilton County Court of Common Pleas denying his successive petition for postconviction relief. Because the common pleas court lacked jurisdiction to entertain Roberts’s petition and should have dismissed it, we modify the court’s judgment to reflect a dismissal of Roberts’s petition and affirm the judgment as modified.

Roberts was convicted of murder in 2005, following a jury trial presided over by a visiting judge. He unsuccessfully challenged his conviction on direct appeal. *State v. Roberts*, 2007-Ohio-856 (1st Dist.), *discretionary appeal not allowed*, 2007-Ohio-5056. In 2010, Roberts brought his first challenge to the appointment of the visiting judge over his trial, arguing that his conviction was void because there was no entry providing “justifiable reasons for the transfer” of his case. The common pleas

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court denied his postconviction petition, and this court affirmed. *State v. Roberts*, No. C-100456 (1st Dist. June 3, 2011).

Roberts continued to unsuccessfully challenge his murder conviction in postconviction motions and petitions filed between 2011 and 2021. *State v. Roberts*, No. C-110669 (1st Dist. Apr. 18, 2012) (asserting a speedy-trial violation); *State v. Roberts*, No. C-120781 (1st Dist. July 3, 2013) (alleging speedy-trial violation and procedural irregularity in reassignment of case); *State v. Roberts*, 2016 Ohio App. LEXIS 2963 (1st Dist. May 27, 2016) (challenging the reassignment of his case to the visiting judge); *State v. Roberts*, 2017-Ohio-1060 (1st Dist.) (affirming the denial of his motion challenging his entry of conviction, but remanding for the trial court to remove the postrelease-control portion of his sentence); *State v. Roberts*, No. C-190570 (1st Dist. June 24, 2020) (challenging his sentence on remand); *State v. Roberts*, 2021 Ohio App. LEXIS 4517 (1st Dist. Dec. 29, 2021) (challenging the subject-matter jurisdiction of the resentencing court).

In November 2023, Roberts filed a successive petition for postconviction relief seeking to vacate his murder conviction because he had received ineffective assistance from counsel at his trial. Specifically, he argues that his trial counsel failed to investigate and challenge the validity of the visiting judge's assignment to his case, failed to object to the denial of an evidentiary motion, and failed to challenge the visiting judge's authority to preside over his sentencing hearing. The common pleas court denied the petition because it was untimely.

Roberts now appeals, asserting three assignments of error that can reasonably be read together to challenge the denial of his petition for postconviction relief without an evidentiary hearing. We review de novo whether the common pleas court had

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jurisdiction to entertain Roberts’s petition. *State v. Sanders*, 2024-Ohio-1026, ¶ 13 (1st Dist.).

Under R.C. 2953.21(A)(2), a defendant must file a petition for postconviction relief within 365 days from the date the trial transcripts were filed in the direct appeal. As Roberts has filed several petitions for postconviction relief in the past, this current petition is successive and was filed well outside the time (more than 14 years) prescribed by R.C. 2953.21(A)(2). However, a common pleas court may entertain a late postconviction petition if the petition satisfies the jurisdictional requirements of R.C. 2953.23. The petitioner must show either that he or she was unavoidably prevented from discovering the facts upon which the postconviction claims depend, or that the postconviction claims are predicated upon a new and retrospectively applicable right recognized by the United States Supreme Court since the time for filing the petition had expired. R.C. 2953.23(A)(1)(a). And the petitioner must show “by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted . . . .” R.C. 2953.23(A)(1)(b). If the petitioner does not satisfy these requirements, the petition is subject to dismissal without an evidentiary hearing. *See* R.C. 2953.21(D) and (F) and 2953.23(A); *State v. Apanovitch*, 2018-Ohio-4744, ¶ 38.

Here, Roberts fails to make any argument about how he was unavoidably prevented from discovering until recently that his case had been reassigned to a visiting judge and that his attorney had failed to object to that action. Notably, Roberts was aware of the alleged procedural irregularity with the appointment of the visiting judge by, at least, the year 2010, when he raised the issue for the first time in a postconviction petition. Although he now frames the issue as one of ineffective

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assistance of counsel, that does not change the fact that he was aware of a potential issue by 2010 and that at the time of trial his counsel had failed to object to certain evidentiary rulings. He also does not (and cannot) argue that his postconviction claims are based on a new right recognized by the United States Supreme Court.

Because Roberts's petition was successive and he could not satisfy the jurisdictional requirements for a late filing, his petition for postconviction relief should have been dismissed rather than denied. Accordingly, we modify the common pleas court's judgment to reflect a dismissal of Roberts's petition. *See* App.R. 12(A)(1)(a). We overrule the three assignments of error and affirm the common pleas court's judgment as modified.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

**ZAYAS, P.J., BOCK and MOORE, JJ.**

**To the clerk:**

**Enter upon the journal of the court on 4/23/2025 per order of the court.**

**By:** \_\_\_\_\_  
**Administrative Judge**