

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

STATE OF OHIO,	:	APPEAL NO.	C-240474
	:	TRIAL NOS.	B-8402559-B
Plaintiff-Appellee,	:		B-8403548-B
vs.	:		
DEBRA DENISE BROWN,	:	<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 Debra Denise Brown appeals the judgment of the Hamilton County Court of Common Pleas denying her “Petition to Vacate or Set Aside Judgment of Conviction or Sentence.” Brown filed the postconviction petition in two separate criminal cases. In the case numbered B-8402559-B, Brown was convicted of aggravated murder, aggravated burglary, aggravated robbery, and attempted aggravated murder. For these offenses, she was sentenced to a term of life in prison with parole eligibility after 20 years and three additional consecutive terms of ten to 25 years in prison. We affirmed these convictions in *State v. Brown*, 31 Ohio App.3d 86 (1st Dist. 1986). In the case numbered B-8403548-B, Brown was convicted of aggravated murder and sentenced to death. She unsuccessfully challenged her convictions and death sentence in previous appeals, but her death sentence was commuted to life imprisonment by a former governor of the State of Ohio. *State v.*

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*Brown*, 1987 Ohio App. LEXIS 6419 (1st Dist. Apr. 15, 1987), *aff'd*, 38 Ohio St.3d 305 (1988), *cert. denied*, 489 U.S. 1040 (1989).

Brown filed a petition for postconviction relief in both cases in December 1989, but each was denied by the trial court in July 1990. Brown’s current postconviction petition is therefore successive. It was also filed nearly forty years after her underlying convictions.

In challenging the trial court’s denial of her current petition, Brown raises 14 assignments of error, all asserting that she received ineffective assistance of counsel at trial and on appeal in both criminal cases. We decline to consider these assignments of error on the merits, however, because the trial court lacked jurisdiction to consider Brown’s successive postconviction petition.

Pursuant to R.C. 2953.23(A), a court may not entertain a second or successive petition for postconviction relief unless certain conditions are met. As relevant here, a petitioner must show either that the petitioner 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 those jurisdictional requirements, the petition is subject to dismissal without a hearing. *See* R.C. 2953.21(D) and (F) and 2953.23(A); *State v. Williams*, 2024-Ohio-1148, ¶ 10 (1st Dist.).

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Brown did not meet these jurisdictional requirements. Her petition did not demonstrate that Brown was unavoidably prevented from discovering the alleged ineffectiveness of counsel sooner, particularly given the nearly forty-year gap between the trial and direct appeal and the filing of the successive postconviction petition. Nor did it argue that the postconviction claims were predicated upon a new retroactive right recognized by the United States Supreme Court. The trial court therefore lacked jurisdiction to consider Brown’s petition and should have dismissed it. *See Williams* at ¶ 13.

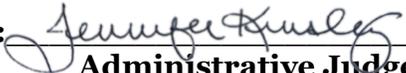
For this reason, we overrule Brown’s assignments of error, modify the trial court’s judgment to reflect a dismissal rather than a denial of the petition, and affirm the trial court’s judgment as modified.

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.

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

**To the clerk:**

**Enter upon the journal of the court on 8/6/2025 per order of the court.**

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