

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

STATE OF OHIO,	:	APPEAL NO. C-250056
	:	TRIAL NO. B-1203778
Plaintiff-Appellee,	:	
vs.	:	
BRIAN EVERETT,	:	<i>JUDGMENT ENTRY</i>
Defendant-Appellant.	:	

NESTOR, Judge.

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 Brian Everett appeals the judgment of the Hamilton County Court of Common Pleas dismissing his successive petition for postconviction relief. Because the common pleas court lacked jurisdiction to consider Everett's petition, we affirm.

Relevant here, Everett was indicted for two counts of murder with respect to the stabbing death of a 12-year-old girl: aggravated murder in count one and felony murder in count two. The jury acquitted Everett of aggravated murder but found him guilty of voluntary manslaughter in count one and guilty of felony murder in count two. At sentencing, the trial court merged counts one and two and sentenced Everett to 15 years to life for felony murder. In his direct appeal and in a postconviction petition filed in October 2021, Everett unsuccessfully challenged his conviction for

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felony murder on the basis of inconsistent verdicts, arguing, respectively, that he should have either been granted a new trial or sentenced for voluntary manslaughter and not felony murder. *State v. Everett*, 2015-Ohio-5273 (1st Dist.) (“*Everett I*”), *appeal not accepted*, 2016-Ohio-1596; *State v. Everett*, 2022-Ohio-3804, ¶ 2-3 (1st Dist.) (“*Everett II*”).

In November 2024, Everett filed a successive petition for postconviction relief again seeking to vacate his conviction for felony murder, raising a similar argument as in his previous petition. The common pleas court dismissed Everett’s petition, finding that it lacked jurisdiction to consider it.

Everett now appeals, bringing forth two assignments of error.

In his first assignment, Everett argues that the lower court erred by dismissing his petition without issuing findings of fact or conclusions of law. We disagree. A common pleas court is only required to issue findings of fact and conclusions of law when it denies or dismisses a *timely-filed* petition for postconviction relief. *Everett II*, 2022-Ohio-3804, ¶ 9, citing *State ex rel. George v. Burnside*, 2008-Ohio-2702, ¶ 6. Here, Everett concedes that his successive petition was untimely. Thus, the lower court did not err by failing to issue findings of fact or conclusions of law in its dismissal entry. The first assignment of error is overruled.

In his second assignment, Everett contends that the common pleas court abused its discretion by dismissing his petition. He argues that the court had jurisdiction to consider his petition because, although it was untimely, he had met the jurisdictional requirements of R.C. 2953.23. We are unpersuaded.

A common pleas court may consider an untimely-filed petition for postconviction relief where the petitioner can meet the jurisdictional requirements of R.C. 2953.23. But in order to establish the court’s jurisdiction under R.C. 2953.23,

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Everett has to show either that he was unavoidably prevented from discovering the facts upon which his 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).

Here, Everett does not argue that his petition is based upon a new right recognized by the United States Supreme Court. Instead, he claims that he was unavoidably prevented from discovering new caselaw, which he believes supports his argument that his conviction for felony murder violated due process because it was based on inconsistent verdicts. But R.C. 2953.23(A) refers to a petitioner who was unavoidably prevented from discovering *facts* to support a postconviction claim, not new law. *State v. Martin*, 2025-Ohio-144, ¶ 59 (11th Dist.), citing *State v. Clay*, 2018-Ohio-985, ¶ 12 (7th Dist.), and *State v. Kane*, 2017-Ohio-7838, ¶ 17 (10th Dist.) (holding “ignorance of the law does not excuse appellant’s untimely filing of her petition for postconviction relief”).

Because Everett cannot demonstrate that he was unavoidably prevented from discovering *facts* that supported his postconviction claims, he has not satisfied the jurisdictional requirements set forth in R.C. 2953.23(A). Accordingly, the common pleas court lacked jurisdiction to consider the petition and did not err by dismissing it. *See State v. Hatton*, 2018-Ohio-4744, ¶ 24 (appellate courts review jurisdictional questions de novo). The second assignment of error is overruled.

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Having overruled both assignments of error, we affirm the common pleas court's judgment.

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., and **MOORE, J.**, concur.

To the clerk:

Enter upon the journal of the court on 9/19/2025 per order of the court.

By: 
Administrative Judge