

OHIO COURT OF APPEALS, FIFTH APPELLATE DISTRICT

State v. Phelps

2026-Ohio-1575 · No. 2025 CA 00035 · Decided April 30, 2026

SUMMARY

The Ohio Court of Appeals for the Fifth Appellate District affirmed the dismissal of Robert Phelps's petition for post-conviction relief as untimely. The court held that Phelps did not satisfy the statutory exceptions allowing consideration of an untimely petition and that the trial court was not required to issue findings of fact and conclusions of law or conduct an evidentiary hearing.

CASE DETAILS

COURT	Ohio Court of Appeals, Fifth Appellate District
WRITING FOR THE COURT	William B. Hoffman, P.J.; Robert G. Montgomery, J.; Kevin W. Popham, J.
JURISDICTION	Ohio Court of Appeals, Fifth Appellate District, Fairfield County
DECIDED	April 30, 2026
DOCKET	2025 CA 00035
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the dismissal of an untimely petition for post-conviction relief by the Fairfield County Court of Common Pleas.
STANDARD OF REVIEW	The appellate court reviewed whether the trial court properly dismissed the post-conviction petition as untimely and whether the court was required to issue findings of fact and conclusions of law or conduct an evidentiary hearing.
PRECEDENTIAL VALUE	Published
PARTIES	Robert Phelps v. State of Ohio

TOPICS

- state post-conviction relief
- post-conviction relief
- criminal procedure
- appellate procedure
- due process

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- appellate procedure
- constitutional law

QUESTIONS PRESENTED

1. Whether the trial court properly dismissed Phelps's petition for post-conviction relief as untimely.
2. Whether a trial court must issue findings of fact and conclusions of law when dismissing an untimely post-conviction petition.
3. Whether a trial court must conduct an evidentiary hearing when it lacks jurisdiction to consider an untimely post-conviction petition.

HOLDINGS

1. The petition was untimely because it was filed more than 365 days after the transcript was filed in the direct appeal, and Phelps failed to satisfy either applicable exception permitting consideration of an untimely petition under R.C. 2953.23(A)(1).
2. The trial court was not required to issue findings of fact and conclusions of law or conduct an evidentiary hearing when dismissing a post-conviction petition as untimely and lacking jurisdiction to consider it.

KEY QUOTATIONS

“A trial court has no jurisdiction to hear an untimely petition for post-conviction relief unless the movant meets the requirements set forth in R.C. § 2953.23(A).” (¶ 8)

“Further, when a trial court lacks jurisdiction to consider an untimely-filed petition, it is not necessary for the court to hold an evidentiary hearing.” (¶ 10)

FACTUAL BACKGROUND

Phelps pleaded guilty to twelve counts of aggravated trafficking in drugs and one count of engaging in a pattern of corrupt activity in exchange for dismissal of seventy-one additional indictment counts. The trial court imposed the jointly recommended fifteen-year prison sentence, and the Court of Appeals affirmed the conviction and sentence. The transcript in the direct appeal was filed on June 8, 2021, but Phelps did not file his post-conviction petition until September 4, 2025. His petition alleged prosecutorial misconduct, ineffective assistance of counsel, and cumulative constitutional violations, but did not assert that he was unavoidably prevented from discovering the facts supporting his claims or establish actual innocence by clear and convincing evidence.

PROCEDURAL HISTORY

Phelps pleaded guilty in 2020 to twelve counts of aggravated trafficking in drugs and one count of engaging in a pattern of corrupt activity and received a jointly recommended fifteen-year sentence. The Ohio Fifth District previously affirmed his conviction and sentence. Phelps filed a petition for post-conviction relief on September 4, 2025; the trial court dismissed it as untimely and without findings of fact, conclusions of law, or an evidentiary hearing. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Phelps, 2022-Ohio-3025 (5th Dist.)
- State v. Robinson, 2022-Ohio-3566, ¶ 12 (5th Dist.)
- State ex rel. George v. Burnside, 2008-Ohio-2702, ¶ 6
- State v. Moore, 2015-Ohio-550, ¶ 12 (2d Dist.)

OPINION

State v. Phelps

2026 Ohio 1575

PER CURIAM.

[Cite as State v. Phelps, 2026-Ohio-1575.]

IN THE OHIO COURT OF APPEALS

FIFTH APPELLATE DISTRICT

FAIRFIELD COUNTY, OHIO

STATE OF OHIO Case No. 2025 CA 00035 Plaintiff - Appellee Opinion and Judgment Entry -vs-
Appeal from the Fairfield County Court of Common Pleas, Case No. 2019 CR 00499

ROBERT PHELPS

Judgment: Affirmed Defendant - Appellant Date of Judgment Entry: April 30, 2026 BEFORE: William B. Hoffman; Robert G. Montgomery; Kevin W. Popham, Judges APPEARANCES: R. Kyle Witt, Fairfield County Prosecutor, Austin R. Lines, Assistant Prosecuting Attorney for Plaintiff-Appellee; Robert Phelps, Pro se. Hoffman, P.J. {¶1} Defendant-appellant Robert Phelps appeals the judgment entered by the Fairfield County Common Pleas Court dismissing his petition for post-conviction relief on the basis it was untimely filed. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE1

{¶2} On December 22, 2020, Appellant entered pleas of guilty in the Fairfield County Common Pleas Court to twelve counts of aggravated trafficking in drugs and one count of engaging in a pattern of corrupt activity. In exchange for his guilty pleas, the 1 A rendition of the facts is unnecessary to our disposition of the appeal. State dismissed the remaining seventy-one counts of the indictment. Pursuant to a negotiated plea agreement, the parties jointly recommended a sentence of fifteen years of incarceration. The trial court convicted Appellant upon his pleas of guilty and in accordance with the joint recommendation, sentenced Appellant to fifteen years of incarceration. Appellant appealed to this Court, and we affirmed the judgment of conviction and sentence. State v. Phelps, 2022-Ohio-3025 (5th Dist.). {¶3} Appellant filed a petition for post-conviction relief in the trial court on September 4, 2025. The petition alleged prosecutorial misconduct in the presentation of evidence to the grand jury, ineffective assistance of trial counsel for failing to move for suppression of evidence and/or dismissal of the charges, ineffective assistance of counsel for failing to investigate and soliciting money from Appellant as court-appointed counsel, and the cumulative effect of his claims constituted a violation of his

constitutional rights. The trial court dismissed the petition as untimely filed. It is from the September 9, 2025 judgment of the trial court Appellant prosecutes his appeal, assigning as error:

APPELLANT’S DUE PROCESS AND EQUAL PROTECTION OF

THE LAW RIGHTS, AS GUARANTEED BY THE FIFTH AND

FOURTEENTH AMENDMENTS OF THE UNITED STATES

CONSTITUTION AND ARTICLE I OF THE OHIO CONSTITUTION, WERE

VIOLATED AND DENIED AS A RESULT OF JUDGE TRIMMER ABUSING

HIS DISCRETION BY NEGLECTING TO FILE FINDINGS OF FACT AND

CONCLUSIONS OF LAW, AND REFUSING TO ORDER THE REQUESTED

EVIDENTIARY HEARING. {¶4} Appellant argues the trial court erred in dismissing his petition

as untimely without issuing findings of fact and conclusions of law, and without holding an

evidentiary hearing. We disagree. {¶5} R.C. 2953.21(A)(2)(a) provides in pertinent part: Except as

otherwise provided in section 2953.23 of the Revised Code, a petition under division (A)(1)(a)(i),

(ii), or (iii) of this section shall be filed no later than three hundred sixty-five days after the date on

which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of

conviction or adjudication[.] {¶6} The transcript of the proceedings was filed in this Court in

Appellant’s direct appeal on June 8, 2021. Therefore, Appellant’s petition, filed September 4,

2025, is clearly untimely filed. {¶7} R.C. 2953.23(A)(1)(a) allows the trial court to entertain an

untimely-filed petition under certain circumstances: (A) Whether a hearing is or is not held on a

petition filed pursuant to section 2953.21 of the Revised Code, a court may not entertain a petition

filed after the expiration of the period prescribed in division (A) of that section or a second

petition or successive petitions for similar relief on behalf of a petitioner unless division (A)(1) or

(2)2 of this section applies: 2 Subsection (A)(2) deals with DNA evidence which is not at issue in

the instant case.

(1) Both of the following apply:

(a) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the

facts upon which the petitioner must rely to present the claim for relief, or, subsequent to the

period prescribed in division (A)(2) of section 2953.21 of the Revised Code or to the filing of an

earlier petition, the United States Supreme Court recognized a new federal or state right that

applies retroactively to persons in the petitioner’s situation, and the petition asserts a claim based

on that right. (b) The petitioner shows 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 or, if the claim challenges a sentence of death that, but for

constitutional error at the sentencing hearing, no reasonable factfinder would have found the

petitioner eligible for the death sentence. {¶8} A trial court has no jurisdiction to hear an untimely

petition for post- conviction relief unless the movant meets the requirements set forth in R.C. §

2953.23(A). State v. Robinson, 2022-Ohio-3566, ¶ 12 (5th Dist.). {¶9} Appellant’s petition does

not attempt to demonstrate he was unavoidably prevented from discovery of the facts upon which

he must rely to present his claim for relief, and the petition did not demonstrate by clear and convincing evidence, but for the alleged constitutional error, no reasonable factfinder would have found him guilty of the offenses of which he was convicted. Appellant presented no evidence in support of his petition other than the general allegations set forth in his petition regarding the conduct the prosecutor and his court-appointed trial counsel. We find the trial court did not err in finding the petition was untimely filed. {¶10} A trial court has no duty to issue findings of fact and conclusions of law when dismissing a petition as untimely filed. *State ex rel. George v. Burnside*, 2008- Ohio-2702, ¶ 6. Further, when a trial court lacks jurisdiction to consider an untimely- filed petition, it is not necessary for the court to hold an evidentiary hearing. *State v. Moore*, 2015- Ohio-550, ¶ 12 (2nd Dist.). We find the trial court did not err in dismissing Appellant's petition without an evidentiary hearing and without issuing findings of fact and conclusions of law. {¶11} The assignment of error is overruled. {¶12} The judgment of the Fairfield County Court of Common Pleas is affirmed. {¶13} Costs to Appellant. By: Hoffman, P.J. Montgomery, J. and Popham, J. concur.