

COURT OF APPEALS OF OHIO, SEVENTH APPELLATE DISTRICT

State v. Tapscott

2025-Ohio-5609 (7th Dist. 2025) · No. 25 MA 0059 · Decided December 16, 2025

SUMMARY

The Seventh District Court of Appeals of Ohio affirmed the dismissal without a hearing of Allen D. Tapscott, Jr.’s successive petition for postconviction relief, captioned “Motion to Correct a Void Sentence.” The court held that the petition was untimely, failed to satisfy an exception under R.C. 2953.23, lacked supporting evidence establishing substantive grounds for relief, and was barred by res judicata. The court also rejected challenges concerning consecutive sentences and merger of allied offenses of similar import.

CASE DETAILS

COURT	Court of Appeals of Ohio, Seventh Appellate District
WRITING FOR THE COURT	Katelyn Dickey; Carol Ann Robb; Mark A. Hanni
JURISDICTION	Ohio Court of Appeals, Seventh Appellate District, Mahoning County
DECIDED	December 16, 2025
DOCKET	25 MA 0059
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed the dismissal, without an evidentiary hearing, of his untimely second petition for postconviction relief, captioned Motion to Correct a Void Sentence.
STANDARD OF REVIEW	Abuse of discretion for the trial court’s decision to deny a postconviction-relief petition without a hearing.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Allen D. Tapscott, Jr. v. State of Ohio

TOPICS

- post-conviction relief
- successive petitions
- sentencing
- appellate procedure
- criminal procedure

PRACTICE AREAS

- Criminal procedure
- Postconviction relief
- Appellate procedure
- Sentencing

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by dismissing without a hearing Tapscott's successive postconviction petition.
2. Whether Tapscott's challenge to the consecutive-sentence findings was barred by untimeliness, res judicata, and his failure to raise the issue in a direct appeal from resentencing.
3. Whether Tapscott's allied-offenses merger claim was barred by res judicata and prior decisions rejecting the claim.
4. Whether Tapscott demonstrated an exception under R.C. 2953.23 permitting consideration of his untimely successive petition.

HOLDINGS

1. A motion seeking relief from a criminal judgment based on alleged constitutional or sentencing errors is treated as a petition for postconviction relief under R.C. 2953.21 and R.C. 2953.23, regardless of its caption.
2. The trial court properly dismissed the petition without a hearing because Tapscott offered no evidence or operative facts establishing substantive grounds for postconviction relief.
3. Tapscott's claims concerning consecutive sentences and allied-offenses merger were barred by res judicata because they were raised or could have been raised in prior proceedings, including a direct appeal.
4. The petition was untimely under R.C. 2953.21(A)(2)(a), and Tapscott failed to satisfy either exception in R.C. 2953.23(A)(1)(a)-(b); therefore, the trial court lacked jurisdiction to consider the petition.

KEY QUOTATIONS

"If an error exists in judgment or sentence issued in a matter over which the trial court maintained subject matter jurisdiction, the judgment is voidable, not void." (§ 12)

"Because Appellant's second pro se petition for postconviction relief was untimely filed, no exception entitling him to relief was demonstrated, his claims are barred by principles of res judicata, and there are additionally no substantive, supporting grounds, the trial court did not abuse its discretion in dismissing his petition without a hearing." (§ 19)

FACTUAL BACKGROUND

Tapscott was convicted after separate jury and bench trials of two aggravated robberies, aggravated burglary, and having weapons while under disability, with firearm specifications attached to the robbery and burglary counts. His aggregate sentence after resentencing was 28 years; the aggravated burglary conviction was merged with the aggravated robbery convictions and no sentence was imposed on the burglary count. His later postconviction petition challenged the consecutive sentences and asserted that the aggravated robbery convictions were allied offenses requiring merger, but he supplied no supporting evidence beyond his own conclusory allegations.

PROCEDURAL HISTORY

Tapscott was convicted in 2011 and sentenced to an aggregate term of 28 years. The Seventh District affirmed his convictions but remanded for resentencing; the trial court entered a new 28-year sentence in 2012, and Tapscott did not directly appeal that resentencing. After an unsuccessful 2020 motion construed as a postconviction petition and later unsuccessful prohibition proceedings, Tapscott filed a second postconviction petition in May 2025 challenging consecutive sentences and the merger of allied offenses. The Mahoning County Court of Common Pleas dismissed the petition without a hearing, and the Seventh District affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Tapscott v. Mahoning County Court of Common Pleas, General Division, 2025-Ohio-2633, ¶¶ 2-8, 11 (7th Dist.)
- State v. Tapscott, 2012-Ohio-4213, ¶ 46 (7th Dist.)
- State v. Tapscott, 2021-Ohio-4662, ¶ 13 (7th Dist.)
- State v. Hudson, 2017-Ohio-4280, ¶ 9 (7th Dist.)
- State v. Steffen, 70 Ohio St.3d 399, 410, 1994-Ohio-111, 639 N.E.2d 67
- State v. Martin, 7th Dist. No. 12 MA 167, 2013-Ohio-2881, ¶ 13
- State v. Gondor, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 58
- State v. Dixon, 7th Dist. No. 10 MA 185, 2013-Ohio-2951, ¶ 21
- State v. Calhoun, 86 Ohio St.3d 279, 291, 1999-Ohio-102, 714 N.E.2d 905
- State v. Cornwell, 7th Dist. No. 00-CA-217, 2002-Ohio-5177, ¶ 25
- State v. Anderson, 2024-Ohio-2704, ¶¶ 10, 15-16 (7th Dist.)
- State v. Smith, 2017-Ohio-7770, ¶¶ 8-10 (7th Dist.)
- State v. West, 2009-Ohio-3347, ¶ 24 (7th Dist.)
- State v. Perry, 10 Ohio St.2d 175, 180-181 (1967)
- State v. Smith, 2019-Ohio-4501, ¶ 8 (7th Dist.)
- State v. Harper, State v. Harper, 2020-Ohio-2913, ¶¶ 4, 42

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