

The Supreme Court of Ohio

FILED

MAY 13 2020

CLERK OF COURT
SUPREME COURT OF OHIO

The State of Ohio ex rel. Marcus Simpson

v.

The Hamilton County Court of Common Pleas
et al.

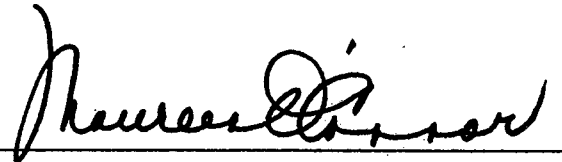
Case No. 2020-0251

IN MANDAMUS

ENTRY

This cause originated in this court on the filing of a complaint for a writ of mandamus.

Upon consideration of respondent's motion to dismiss, it is ordered by the court that the motion to dismiss is granted. Accordingly, this cause is dismissed.



Maureen O'Connor
Chief Justice

APPENDIX A.

The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>

The Supreme Court of Ohio

FILED

JUL 21 2020

CLERK OF COURT
SUPREME COURT OF OHIO

The State of Ohio ex rel. Marcus Simpson

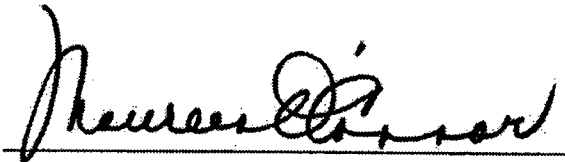
Case No. 2020-0251

v.

RECONSIDERATION ENTRY

The Hamilton County Court of Common Pleas
et al.

It is ordered by the court that the motion for reconsideration in this case is denied.



Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>

APPENDIX C.

THE STATE OF OHIO

-VS-

Patricia Simpson

COURT OF COMMON PLEAS

MAY 24 1984

FILED 56

Case No. 179-550-B

JUDGMENT ENTRY: SENTENCE:
INCARCERATION

Defendant

Defendant was present in open Court with Counsel

Robert P. Necklenborg

on the 24th day of May

1984 for sentence.

The Court informed the defendant as the defendant well knew,
after trial by the Court, the defendant had been found guilty

of the offense(s) of Aggravated Robbery 2911.01 P.C..

The Court afforded defendant's Counsel an opportunity to speak on
behalf of defendant. The Court addressed the defendant personally
and asked if the defendant wished to make a statement in the defendant's
own behalf or present any information in mitigation of punishment.

Defendant is sentenced to be imprisoned in

Ohio Penitentiary

for a minimum term of FIVE(5) Years and a maximum term of TWENTY-FIVE(25) Years
and pay costs.

179-550-B
25-8-7-58

STATE OF OHIO, COUNTY OF HAMILTON
COURT OF COMMON PLEAS

THIS IS TO CERTIFY THAT THE FOREGOING
IS A TRUE AND CORRECT COPY OF THE
JUDGMENT ENTRY FILED IN THIS OFFICE ENTERED

May 24, 1984

WITNESSED BY THE CLERK OF SAID COURT
THIS May 25, 1984

ROBERT D. JENNINGS, CLERK OF COURTS
BY *Robert D. Jennings*
DEPUTY CLERK

Defendant was notified of the right to appeal as required by
Crim. R. 32(A)(2)

0/75 P-1

Judge

APPENDIX B.

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



STATE OF OHIO,

Respondent-Appellee,

vs.

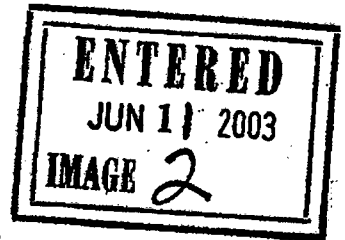
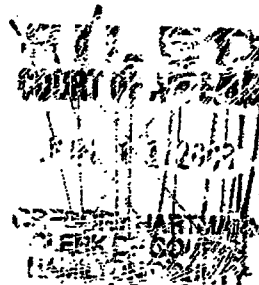
MARCUS SIMPSON,

Petitioner-Appellant.

APPEAL NO. C-020698

TRIAL NO. B-8301629

JUDGMENT ENTRY.



This appeal is considered on the accelerated calendar under App.R. 11.1(E) and Loc.R. 12, and this Judgment Entry shall not be considered an Opinion of the Court pursuant to S.Ct.R.Rep.Op. 3(A).

We overrule the two assignments of error advanced on appeal upon our determination that the common pleas court properly declined to entertain the appellant's petition for postconviction relief. The petition represented the appellant's third attempt to secure relief under R.C. 2953.21, and the appellant filed the petition well after the filing date set by R.C. 2953.21(A)(2). See Am.Sub.S.B. No. 4 (amending R.C. 2953.21[A][2], effective September 21, 1995, and establishing the filing time for a postconviction petitioner sentenced before the amendment's effective date). Thus, R.C. 2953.23(A) precluded the common pleas court from entertaining the appellant's tardy and successive petition, when the appellant failed to demonstrate either that he had been unavoidably prevented from

APPENDIX D.

OHIO FIRST DISTRICT COURT OF APPEALS

discovering the facts upon which his petition depended, or that his claim had been predicated upon a new or retrospectively applicable federal or state right recognized by the United States Supreme Court since the expiration of the time prescribed by R.C. 2953.21(A)(2).

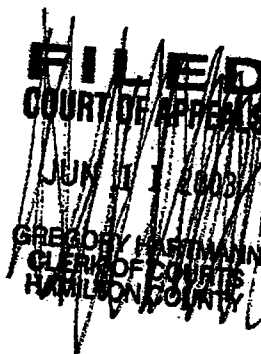
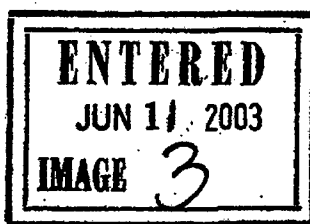
We, therefore, affirm the judgment of the common pleas court.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., DOAN and WINKLER, JJ.

To the Clerk:

Enter upon the Journal of the Court on JUN 11 2003
per order of the Court [Signature]
Presiding Judge



The Supreme Court of Ohio

FILED

SEP 24 2003

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

State of Ohio,
Appellee,

v.

Marcus Simpson,
Appellant.



D56499546

Case No. 03-1216

E N T R Y

(Corrected)

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, \$40.00, paid by Marcus Simpson.

(Hamilton County Court of Appeals; No. C020698)

THOMAS J. MOYER
Chief Justice

FILED
COURT OF APPEALS

OCT 10 2003

GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY

FILED

2003 OCT 10 P 2:24

GREGORY HARTMANN
CLERK OF COURTS
HAM. CNTY. OH

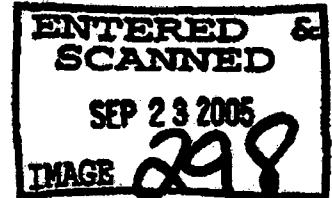
CLERK OF COURTS

OCT 10 2003

RECEIVED BY

APPENDIX E.

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS
CRIMINAL DIVISION



STATE OF OHIO	:	No. B-831629
	:	(Judge Cooper)
Plaintiff-Respondent	:	
vs.	:	<u>ENTRY DENYING TO ENTERTAIN</u>
	:	<u>POST CONVICTION PETITION FILED</u>
MARCUS SIMPSON	:	<u>OUT OF TIME</u>
Defendant-Petitioner	:	

Pursuant to R.C. 2953.23(A), a court may not entertain a petition to vacate that is not timely filed. A petition to vacate must be filed within 180 days after a transcript is filed in the court of appeals for a direct appeal, or 180 days after the expiration for filing an appeal if no appeal is taken, which is 210 days from the date of the judgment entry of conviction and sentence.

In this case, the transcript for appeal was filed on October 1, 1984. The Post-Conviction Petition was filed on September 20, 2005 beyond the 180 day time limit for the filing of such a petition. Therefore, by statute, this court may not entertain this petition and may summarily dismiss the petition without findings of fact and conclusions of law being filed.

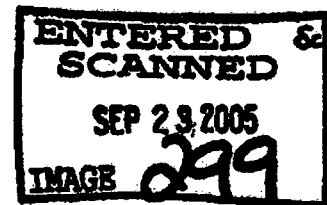
This petition is also defendant's third petition for post-conviction relief. It is therefore successive.

While a successive or tardy petition may be filed for reasons set forth in R.C. 2953.23, the defendant has failed to demonstrate any of those grounds to allow this court to entertain his petition.

IT IS HEREBY ORDERED that the petition filed by the defendant be dismissed as untimely filed.


Ethna Cooper
Judge, Court of Common Pleas

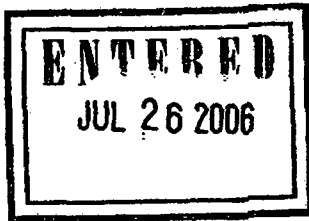
James Michael Keeling 0068810
Asst. Prosecuting Attorney
230 E. Ninth ST.
Cincinnati OH, 45202



Marcus Simpson,
Pro Se,
9884 Carey Walk,
Cincinnati, Ohio 45215.

IN THE COURT OF APPEALS

**FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**



D69323792

STATE OF OHIO,	:	APPEAL NO. C-050798
	:	TRIAL NO. B-8301629
Respondent-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
MARCUS SIMPSON,	:	
Petitioner-Appellant.	:	

This appeal is considered on the accelerated calendar under App.R. 11.1(E) and Loc.R. 12, and this Judgment Entry shall not be considered an Opinion of the Court pursuant to S.Ct.R.Rep.Op. 3(A).

We overrule petitioner-appellant Marcus Simpson's five assignments of error upon our determination that the common pleas court properly declined to entertain his petition for postconviction relief. Simpson filed this, his fourth postconviction petition, well after the filing date set by R.C. 2953.21(A)(2). And R.C. 2953.23 precluded the common pleas court from entertaining his tardy and successive petition, because he had neither demonstrated that he had been unavoidably prevented from discovering the facts upon which his petition depended nor predicated his claims upon a new or retrospectively applicable federal or state right recognized by the United States Supreme Court since the filing of his first petition.

We, therefore, affirm the judgment of the court below.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., DOAN and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on July 26, 2006

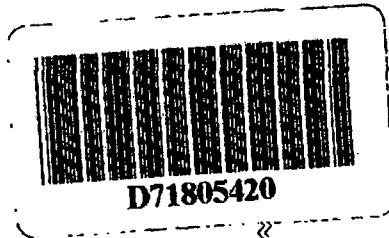
per order of the Court 
Presiding Judge

FILED

The Supreme Court of Ohio

NOV 29 2006

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO



State of Ohio

v.

Marcus Simpson

Case No. 06-1658

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

B8301629
(Hamilton County Court of Appeals; No. C050798)

THOMAS J. MOYER
Chief Justice

FILED

2007 JAN 29 A 9:45

GREGORY HARTMANN
CLERK OF COURTS
HAM. CNTY. OH

FILED
COURT OF APPEALS

JAN 29 2007

GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY

JAN 29 2007

RECEIVED BY

APPENDIX H.

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

STATE OF OHIO EX REL.
MARCUS SIMPSON,

APPEAL NO. C-080473

Relator,

vs

ENTRY DISMISSING PETITION
FOR WRIT OF MANDAMUS

THE HONORABLE JUDGE
ETHNA M. COOPER,

Respondent.

This cause came on to be considered upon the petition for a writ of mandamus, the motion of the respondent to dismiss the petition, and the relator's memorandum in response.

The Court finds that the motion to dismiss is well taken and is granted.

The petition for writ of mandamus is dismissed.

To The Clerk:

Enter upon the Journal of the Court on JUL 23 2008 per order of the Court.

By: _____

Presiding Judge

(Copies sent to all counsel)

APPENDIX I.

The Supreme Court of Ohio

FILED

DEC 02 2008

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio ex rel. Marcus Simpson

Case No. 2008-1712

v.

JUDGMENT ENTRY

The Honorable Judge Ethna M. Cooper

APPEAL FROM THE
COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Hamilton County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is affirmed consistent with the opinion rendered herein.

It is further ordered that a mandate be sent to the Court of Appeals for Hamilton County by certifying a copy of this judgment entry and filing it with the Clerk of the Court of Appeals for Hamilton County.

FILED

2009 FEB -2 A 11:08

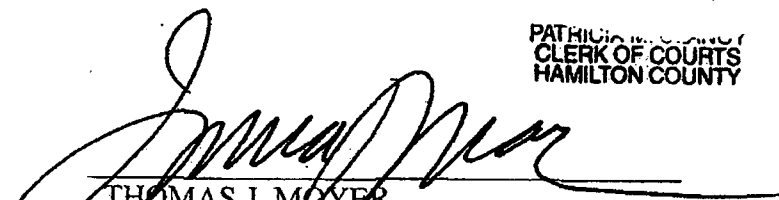
(Hamilton County Court of Appeals; No. C080473)

PATRICIA M. CLAMOR
CLERK OF COURTS
HAMILTON COUNTY, OHIO

FILED
COURT OF APPEALS

FEB - 2 2009

PATRICIA M. CLAMOR
CLERK OF COURTS
HAMILTON COUNTY


THOMAS J. MOYER
Chief Justice

I CERTIFY that this document is a true and accurate copy of the judgment entry of the Supreme Court of Ohio filed on 12/2/08 in Case No. 08-1712 and constitutes the mandate of the Court under S. Ct. Prac. R. XI, Section 4.

In witness, I have subscribed my name and affixed the seal of the Supreme Court of Ohio on this 28th day of January, 20 09.

Clerk of Court



00100012

APPENDIX J.

THE STATE EX REL. SIMPSON, APPELLANT, v. COOPER, JUDGE, APPELLEE.

[Cite as *State ex rel. Simpson v. Cooper*,
120 Ohio St.3d 297, 2008-Ohio-6110.]

*Mandamus to compel vacation of criminal conviction—Adequate remedy by
appeal—Writ denied.*

(No. 2008-1712—Submitted November 19, 2008—Decided December 2, 2008.)

APPEAL from the Court of Appeals for Hamilton County, No. C-080473.

Per Curiam.

{¶ 1} This is an appeal from a judgment dismissing a petition for a writ of mandamus to compel a common pleas court judge to vacate a criminal conviction. Because the petition failed to state a viable mandamus claim, we affirm the judgment.

Conviction and Sentence

{¶ 2} In 1984, appellant, Marcus Simpson, was convicted of aggravated robbery and was sentenced to prison. On appeal, the judgment was affirmed. *State v. Simpson* (Apr. 3, 1985), Hamilton App. No. C-840420, 1985 WL 6728.

Mandamus

{¶ 3} In June 2008, Simpson filed a petition in the Court of Appeals for Hamilton County for a writ of mandamus to compel appellee, Hamilton County Common Pleas Court Judge Ethna M. Cooper, to vacate his conviction for aggravated robbery. Simpson claimed that he had been erroneously tried for the uncharged offense of attempted aggravated robbery and that he was actually innocent of the charged and uncharged offenses. The court of appeals granted Judge Cooper's motion to dismiss the petition.

Appeal

SUPREME COURT OF OHIO

{¶ 4} In his appeal as of right, Simpson contends that the court of appeals erred in dismissing his mandamus petition. Simpson's contentions lack merit for the following reasons.

{¶ 5} First, notwithstanding his claims to the contrary, Simpson was convicted of aggravated robbery and not attempted aggravated robbery.

{¶ 6} Second, Simpson had an adequate remedy at law by direct appeal to raise his challenge to the validity or sufficiency of his indictment. *State ex rel. Dix v. McAllister* (1998), 81 Ohio St.3d 107, 108, 689 N.E.2d 561.

{¶ 7} Finally, *res judicata* bars Simpson's claims concerning insufficiency of the evidence supporting his conviction, which he previously asserted in his direct appeal. See, e.g., *Lynch v. Wilson*, 114 Ohio St.3d 118, 2007-Ohio-3254, 868 N.E.2d 982, ¶ 6.

{¶ 8} Therefore, we affirm the judgment of the court of appeals.

Judgment affirmed.

MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR, O'DONNELL, LANZINGER, and CUPP, JJ., concur.

Joseph T. Deters, Hamilton County Prosecuting Attorney, and James Michael Keeling, Assistant Prosecuting Attorney, for appellee.

Marcus Simpson, pro se.

FILED

MAY 23 2012

CLERK OF COURT
SUPREME COURT OF OHIO

The Supreme Court of Ohio

State of Ohio ex rel. Marcus Simpson

Case No. 2012-0501

v.

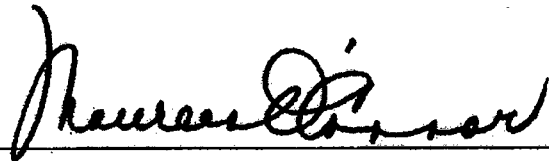
IN MANDAMUS

Honorable Judge Ethna M. Cooper et al.

ENTRY

This cause originated in this court on the filing of a complaint for a writ of mandamus.

Upon consideration of respondent's motion to dismiss, it is ordered by the court that the motion to dismiss is granted. Accordingly, this cause is dismissed.



Maureen O'Connor
Chief Justice

APPENDIX L.



THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS
CRIMINAL DIVISION

ENTER

NOV 18 2015

ETHNA M. COOPER, JUDGE

STATE OF OHIO : Case No. B-8301629
Plaintiff : Judge Ethna M. Cooper
vs. : ENTRY DENYING MOTION TO
MARCUS SIMPSON : VACATE CONVICTION
Defendant :

This matter is once again before the court on one of Marcus Simpson's postconviction pleadings. This pleading is essentially the same as the last one that this court denied in 2005. That denial was affirmed by the First District Court of Appeals in Case No. C-050798.

This time around, Simpson argues that this court should rule on his motion regardless of the fact that he fully completed his sentence in the 1988 because he believes that his conviction is void. He is wrong.

The basis of Simpson's void argument is that his conviction was not supported by either sufficient evidence or by the manifest weight of the evidence. Those were appellate issues. Indeed, they were appellate issues that Simpson raised in his direct appeal in Case No. C-831629. The First District reviewed the evidence presented at trial and found that the evidence fully supported this court's finding of guilt.

So even if Simpson's novel argument that he could attack the sufficiency of the evidence used to convict him nearly 30 years after the conviction was finalized held any merit (which it does not), he cannot get around the fact that a superior court has already ruled that his conviction was supported by sufficient evidence.

So even if Simpson's voidness argument held even a modicum of merit, this court patently lacks the authority to overrule the First District Court of Appeals. As such, his meritless motion is denied.


Ethna Cooper, Judge

To the Clerk:

Issue a copy of this decision to: Marcus Simpson, 781 Villas Cir., Cincinnati, Ohio 45215.



APPENDIX M.

ENTERED

JUN 28 2017

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

STATE OF OHIO,

Plaintiff-Appellee,

vs.

MARCUS SIMPSON,

Defendant-Appellant.

APPEAL NO. C-150740
TRIAL NO. B-8301629

JUDGMENT ENTRY.



D118663762

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

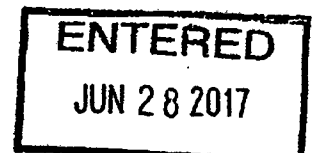
Defendant-appellant Marcus Simpson presents on appeal a single assignment of error challenging the Hamilton County Common Pleas Court's judgment overruling his 2015 "Motion to Vacate" his 1984 aggravated-robbery conviction. We overrule the assignment of error and affirm the court's judgment as modified.

In his motion, the fifth in a series of postconviction motions, Simpson sought relief from his aggravated-robbery conviction on the ground that the evidence adduced at trial was insufficient to support the conviction. He did not designate a statute or rule under which he might be afforded that relief. The common pleas court was, therefore, free to "recast" the motion "into whatever category necessary to identify and establish the criteria by which the motion should be judged." *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12 and syllabus.

APPENDIX N.

Under R.C. 2953.21 et seq., governing the proceedings upon a petition for postconviction relief, a common pleas court may grant a petitioner relief from his conviction upon proof of a constitutional violation during the proceedings resulting in his conviction that rendered his conviction void or voidable. See R.C. 2953.21(A)(1); *State v. Powell*, 90 Ohio App.3d 260, 264, 629 N.E.2d 13 (1st Dist.1993). In support of his sufficiency challenge, Simpson invoked the Due Process Clause of the Fourteenth Amendment to the United States Constitution. A conviction based on legally insufficient evidence violates the due-process guarantee that “no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.” *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Accord *State v. Thompkins*, 78 Ohio St.3d 380, 386-387, 678 N.E.2d 541 (1997); *State v. Campbell*, 1st Dist. Hamilton No. C-950746, 1997 WL 5182, *3 (Jan. 8, 1997). Because Simpson’s motion sought relief based on a constitutional violation in the proceedings leading to his conviction, his postconviction sufficiency challenge was reviewable by the common pleas court under the standards provided by the postconviction statutes.

But the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain Simpson’s motion. He filed the motion well after the time prescribed by R.C. 2953.21(A)(2) had expired. And he failed to satisfy the R.C. 2953.23 jurisdictional requirements for filing a late postconviction petition, when he did not show either that he was unavoidably prevented from discovering the facts upon which his postconviction claim depends, or that his claim was predicated upon a new and



retrospectively applicable right recognized by the United States Supreme Court since the time for filing the claim had expired. See R.C. 2953.23(A)(1).

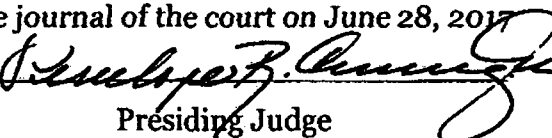
Nor was the motion reviewable under a court's jurisdiction to correct a void judgment. *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 18-19. A judgment of conviction is void only to the extent that a sentence is unauthorized by statute or does not include a statutorily mandated term or if the trial court lacks subject-matter jurisdiction or the authority to act. See *State v. Wurzelbacher*, 1st Dist. Hamilton No. C-130011, 2013-Ohio-4009, ¶ 8; *State v. Grant*, 1st Dist. Hamilton No. C-120695, 2013-Ohio-3421, ¶ 9-16. Therefore, the alleged deficiency in the evidence supporting Simpson's aggravated-robbery, even if demonstrated, would not have rendered that conviction void.

Because the common pleas court had no jurisdiction to entertain Simpson's motion, the motion was subject to dismissal. See R.C. 2953.21(C) and 2953.23(A). Accordingly, upon the authority of App.R. 12(A)(1)(a), we modify the judgment appealed to reflect the dismissal of the motion. And we affirm the judgment as modified.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., MYERS and MILLER, JJ.

To the clerk:)

Enter upon the journal of the court on June 28, 2017
per order of the court 
Presiding Judge



D120264419

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

ENTERED
DEC 05 2017

STATE OF OHIO EX REL. MARCUS
SIMPSON,

APPEAL NO. C-170606

Relator,

vs.

ENTRY GRANTING MOTION TO
DISMISS PETITION FOR WRIT OF
MANDAMUS/PROCEDENDO

HON. ETHNA COOPER,

Respondent.

This cause came on to be considered upon the motion of the Respondent to dismiss the petition for writ of mandamus/procedendo, and upon the response thereto.

The motion is well taken and is granted. Relator seeks a writ compelling the trial court to vacate his conviction in Case No. B-8301629. This court recently held that the trial court did not have jurisdiction to entertain relator's postconviction claim. *State v. Simpson*, 1st Dist. Hamilton No. C-150740 (June 28, 2017). The mandamus action is barred by res judicata and is therefore dismissed.

To The Clerk:

Enter upon the Journal of the Court on DEC 05 2017 per order of the Court.

By:

Beth A. May
Presiding Judge

(Copy sent to counsel)

APPENDIX O.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Simpson v. Cooper*, Slip Opinion No. 2018-Ohio-4068.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2018-OHIO-4068

THE STATE EX REL. SIMPSON v. COOPER, JUDGE.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Simpson v. Cooper*, Slip Opinion No. 2018-Ohio-4068.]

Mandamus—Challenge to credibility of the evidence—Res judicata—Court of appeals’ dismissal of petition affirmed.

(No. 2018-0215—Submitted May 8, 2018—Decided October 10, 2018.)

APPEAL from the Court of Appeals for Hamilton County,
No. C-1700606.

Per Curiam.

{¶ 1} Appellant, Marcus Simpson, appeals the judgment of the First District Court of Appeals dismissing his petition for a writ of mandamus against appellee, Hamilton County Common Pleas Court Judge Ethna Cooper. We affirm the judgment of the court of appeals.

APPENDIX P.

SUPREME COURT OF OHIO

Background

{¶ 2} In 1984, Simpson was convicted in Hamilton County of one count of aggravated robbery and sentenced to five to 25 years in prison. The court of appeals affirmed. *State v. Simpson*, 1st Dist. Hamilton No. C-840420, 1985 WL 6728 (Apr. 3, 1985). We declined to accept Simpson’s discretionary appeal.

{¶ 3} In November 2017, Simpson filed a petition for a writ of mandamus asking the First District Court of Appeals to compel Judge Cooper to vacate Simpson’s aggravated-robbery conviction. Judge Cooper filed a motion to dismiss. In December 2017, the court of appeals granted the motion to dismiss on res judicata grounds.

Legal Analysis

{¶ 4} To be entitled to a writ of mandamus, Simpson must establish by clear and convincing evidence that (1) he has a clear legal right to the requested relief, (2) Judge Cooper has a clear legal duty to provide it, and (3) Simpson lacks an adequate remedy in the ordinary course of the law. *State ex rel. Love v. O’Donnell*, 150 Ohio St.3d 378, 2017-Ohio-5659, 81 N.E.3d 1250, ¶ 3.

{¶ 5} Simpson’s mandamus claim challenges the credibility of the evidence on which his aggravated-robbery conviction is based. However, on direct appeal, Simpson challenged his conviction on insufficient-evidence and manifest-weight grounds. *Simpson*, 1985 WL 6728 at *1. Therefore, Simpson had—and has used—an adequate remedy in the ordinary course of the law and is not entitled to a writ of mandamus. *Shoop v. State*, 144 Ohio St.3d 374, 2015-Ohio-2068, 43 N.E.3d 432, ¶ 8 (“An appeal is generally considered an adequate remedy in the ordinary course of law sufficient to preclude a writ”).

{¶ 6} Moreover, in a previous appeal challenging the dismissal of a prior mandamus action, we held that “res judicata bars Simpson’s claims concerning insufficiency of the evidence supporting his conviction.” *State ex rel. Simpson v. Cooper*, 120 Ohio St.3d 297, 2008-Ohio-6110, 898 N.E.2d 936, ¶ 7. And in

Supreme Court case No. 2012-0501, Simpson filed an original action in mandamus in this court asserting similar claims. *State ex rel. Simpson v. Cooper*, 131 Ohio St.3d 1550, 2012-Ohio-2263, 967 N.E.2d 762 (granting Judge Cooper's motion to dismiss).

Motions

{¶ 7} Simpson has also filed a motion asking this court to declare Judge Cooper a frivolous and vexatious litigator, as well as a motion to appoint the Office of the Ohio Public Defender to represent him for purposes of this appeal.

{¶ 8} S.Ct.Prac.R. 4.03(B) states that “[i]f a party habitually, persistently, and without reasonable cause engages in frivolous conduct under division (A) of this rule, the Supreme Court may, sua sponte or on motion by a party, find the party to be a vexatious litigator.” S.Ct.Prac.R. 4.03(A) defines an action as frivolous “if it is not reasonably well-grounded in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.”

{¶ 9} Simpson argues that we should declare Judge Cooper to be a vexatious litigator because she has not vacated his conviction on the grounds that “the alleged victim Mr. Brunkel did committed [sic] the crime of perjury initiating the felony offense which [Simpson] illegally and unlawfully stands convicted of.” (Emphasis deleted.) Simpson's legal history demonstrates that he has instituted numerous civil actions collaterally challenging his conviction on these grounds. And Judge Cooper's role in these civil actions has been limited to either ruling on his various trial-court motions or defending herself when named as a party. Accordingly, we deny Simpson's motion.

{¶ 10} We deny Simpson's motion to appoint counsel as moot.

Judgment affirmed.

O'CONNOR, C.J., and O'DONNELL, KENNEDY, FRENCH, DEWINE, and DEGENARO, JJ., concur.

FISCHER, J., not participating.

The Supreme Court of Ohio

FILED**AUG 21 2019****CLERK OF COURT
SUPREME COURT OF OHIO**

The State of Ohio ex rel Marcus Simpson

v.

The Hamilton County Court of Common Pleas

Case No. 2019-0755

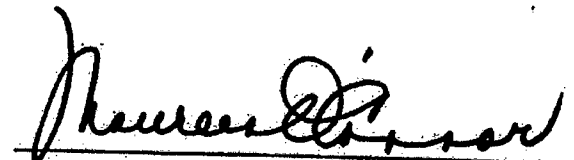
IN MANDAMUS

ENTRY

This cause originated in this court on the filing of a complaint for a writ of mandamus.

Upon consideration of respondent's motion to dismiss, it is ordered by the court that the motion to dismiss is granted. Accordingly, this cause is dismissed.

It is further ordered that relator's motion to amend, motion to strike and motion for appointment of counsel are denied.



Maureen O'Connor
Chief Justice

APPENDIX Q.

The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

January 26, 2004

Clerk
Court of Appeals of Ohio, Hamilton County
Hamilton County Courthouse
1000 Main Street, Room 329
Cincinnati, OH 45202



FILED
COURT OF APPEALS

FEB 02 2004

GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY

Re: Marcus Simpson
v. Ohio
No. 03-7577
(Your No. C-020698)

Dear Clerk:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

William K. Suter

William K. Suter, Clerk

FILED
2004 FEB -3 A 10:42
GREGORY HARTMANN
CLERK OF COURTS
HAM. CNTY. OH

CLERK OF COURTS

FEB 3 2004

RECEIVED

APPENDIX R.

COMPLAINT

HAMILTON COUNTY MUNICIPAL COURT

61700606

STATE OF OHIO vs. MARCUS SIMPSON
1939 MILLVALE COURT
(Address)
SINCINNATI, OHIO

JCE BRUNKEL, being first duly cautioned and sworn, deposes and says that
MARCUS SIMPSON on or about 4-1-83 (date), in Hamilton
County, and State of Ohio, while * ATTEMPTING A THEFT OFFENSE AS DEFINED
IN 2913.01 O.R.C. did
** HAVE A DEADLY WEAPON AS DEFINED IN 2923.11 O.R.C.
UNDER HIS CONTROL, contrary to
and in violation of Section 2911.01 of the Revised Code of Ohio.

The complainant states that this complaint is based on IDENTIFICATION BY WITNESS - RECOVERY
OF PROPERTY - STATEMENT OF ARRESTED

Sworn to and subscribed before me this 4-14-83

[Signature]
Notary Public/Deputy Clerk/Judge

Filed 4-14-83
ROBERT D JENNINGS
Clerk of the Hamilton County Municipal Court

By [Signature]
Deputy Clerk

[Signature]
(Complainant)
602 MADISON ST.
SINCINNATI, OHIO

INSERT ONE OF THE FOLLOWING:

- *(attempting) (committing) a theft offense as defined in 2913.01 O.R.C." or "fleeing immediately after (attempting) (committing) a theft offense as defined in 2913.01 O.R.C."
- **"have a (deadly weapon) (dangerous ordnance) as defined in 2923.11 O.R.C. (on or about his/her person) (under his/her control)" or "(inflict) (attempt to inflict) serious physical harm on (victim's name)"

(A).

APPENDIX #1

1 HAMILTON COUNTY MUNICIPAL COURT

2 HAMILTON COUNTY, OHIO

3 CRIMINAL DIVISION

4 - - -

5 STATE OF OHIO,

:

6 Plaintiff,

:

7 vs.

:

Case No. 83 CRA 8013

8 MARCUS SIMPSON,

:

9 Defendant.

:

10 - - -

11 PRELIMINARY HEARING

12 - - -

13
14 The above-entitled cause came on for Preliminary
15 Hearing before the Honorable F. David J. Albanese, Judge
16 of the Hamilton County Municipal Court, in Courtroom B of
17 the Alms and Doepke Building, on Thursday, April 21, 1983.
18

19 - - -
20
21
22
23
24
25

APPENDIX #2

Q After you told him that you didn't have any money, what happened?

A They run to their car, went down about 50 yards. The short one -- he's not here today -- they started running across I-75 northbound.

Q How many people were there?

A There was two of them.

Q Where was your father at this time?

A Right next to me.

Q Did they take anything from either of you?

A No.

Q Can you describe the knife?

A It's a lock blade. It's about (indicating) three inches, maybe a little longer. I know it's a lock blade.

Q This happened on I-75?

A Yes.

Q Whereabouts?

A Hopple Street Exit, up by that college; across the street from the work house.

Q And what time of day was it?

A It was about 11:30, 12 o'clock.

Q At night?

A Yes.

MR. HANSELMAN: Your witness.

No. **B831629**

Hamilton County Common Pleas

THE STATE OF OHIO

vs.

MARCUS SIMPSON

1939 MILLVILLE CT.

Indictment For
AGGRAVATED ROBBERY
2911.01 R.C.
A TRUE BILL

Foreman of the Grand Jury

Reported and filed this.....day

MAY 19 1983

..... A. D. 19.....

ROBERT D. JENNINGS

Clerk of Hamilton County Common Pleas

by *Eugene Monticci* Deputy

ARTHUR M. HEY, JR.

Prosecuting Attorney, Hamilton County, Ohio

THE STATE OF OHIO, HAMILTON COUNTY

The Court of Common Pleas of Hamilton County:

Term of Nineteen Hundred and **EIGHTY-THREE**

HAMILTON COUNTY, ss.

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio,
upon their oaths present that **MARCUS SIMPSON**

on or about the **FIRST** day of **APRIL** in the year nineteen
hundred and **EIGHTY-THREE** at the County of Hamilton and State of Ohio, aforesaid,
in committing or attempting to commit a theft offense, to-wit: **THEFT OF UNITED STATES CURRENCY**
FROM JOEY BRUNKEL.

had on or about his person a deadly weapon, to-wit; **A KNIFE**

in violation of Section 2911.01 of the Ohio Revised Code, and against the peace and dignity of the State of Ohio.

Arthur M. Ney, Jr.

Prosecuting Attorney
Hamilton County, Ohio

[Signature]
Assistant Prosecuting Attorney

[Handwritten signature]

[Handwritten signature]

FILED
COURTS OF APPEALS
OCT 1 1984
HAMILTON COUNTY
CLERK OF COURTS

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO,]
Plaintiff,]
-vs-]
MARCUS SIMPSON,]
Defendant.]

CASE NO. B-831629

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

Thomas Koustmer, Esq.,
Counsel for Plaintiff.
Robert P. Mecklenborg, Esq.,
Counsel for Defendant.

HAMILTON COUNTY
CLERK OF COURTS

84 OCT 1 AM 11:11
FILED

BE IT REMEMBERED that upon the hearing of this trial on April 23, 1984, before the Honorable Robert H. Gorman, one of the Judges of the said Court of Common Pleas, the following proceedings were had.

FILED
OCT 1 1984
HAMILTON COUNTY
ROBERT D. JENNINGS
CLERK OF COURTS

2

1 A. Yeah, I had it in my pocket.

2 Q. You had it in your pocket?

3 A. Uh-huh.

4 Q. Did he attempt to take that money?

5 A. No.

6 Q. Okay, then your testimony was that after this
7 incident they drove away, correct?

8 A. Right.

9 Q. And then I did lose you at that point, was your
10 testimony then that they turned around and came back going south
11 on I-75?

12 A. He come back around, coming back down north 75,
13 coming in back of us when we was walking.

14 Q. Which vehicle was their direction going in at the
15 beginning?

16 A. North.

17 Q. Okay, what happened after the incident?

18 A. They went up about say fifty, sixty yards, then
19 his buddy got out of the car and ran across the street, across
20 75 going south. He was chasing him, he come back and got in his
21 car and came back around.

22 Q. What do you mean come back around?

23 A. Come back around where we was.

24 Q. Okay, you mean come back around heading south on 75?

25 A. North.

do you wish to respond?

MR. MECKLENBORG: Nothing else.

THE COURT: I think the reasonable inferences are that one could conclude that under all of the circumstances that a theft offense was attempted and, therefore, I am going to overrule the motion for judgment of acquittal since I think that there is a factual issue and under State versus Bridgeman I cannot say as a matter of law that the State has not set forth an issue which could either be resolved on a not guilty or a guilty finding.

MR. MECKLENBORG: Fine.

THE COURT: Do you want to take a break at this time?

MR. MECKLENBORG: Yes, we'd like to take a brief recess.

THE COURT: Do you know how many witnesses you are going to call?

MR. MECKLENBORG: Three witnesses.

THE COURT: Fine. We will take about a twenty-minute break and we will resume at twenty-five minutes of twelve. Thank you.

(After a brief recess Court resumed.)

THE COURT: Gentlemen, are we ready to proceed?

MR. MECKLENBORG: Yes, we are.

1
2 Your Honor, for all these reasons it is just
3 beyond any reasonable doubt that what took place is what
4 the Brunkels said. Certainly credibility is not in the
5 defense' favor in this case with all the inconsistent
6 statements that have been made.

7 THE COURT: Thank you, Mr. Koustmer. Thank you,
8 Mr. Mecklenborg. I want to thank both counsel for the
9 excellent job that you both did in this case.

10 I would agree that this case is strictly one of
11 credibility and after I heard your very excellent opening
12 statements I thought that this was going to be a very
13 difficult case to decide. However, after hearing all of
14 the testimony and the evidence, there is no question in
15 my mind that the Brunkels are telling the truth and that
16 what happened on the evening in question are exactly the
17 facts as they occurred. Therefore, I am convinced
18 beyond a reasonable doubt that the defendant is guilty
19 as charged.

20 Mr. Mecklenborg, I am going to order a pre-sentence
21 investigation and I think-- is your client drug dependent
22 or in danger of becoming drug dependent? I think I am
23 going to order a drug evaluation, just having watched
24 him this last several minutes or so. So this will be
25 continued for sentencing in 30 days. May 23rd at
nine a.m., and during that period of time I am going

**Additional material
from this filing is
available in the
Clerk's Office.**