

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

STATE OF OHIO,	:	APPEAL NO. C-080549
	:	TRIAL NO. B-0606812
Respondent-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
WILLIAM DUNN,	:	
	:	
Petitioner-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Petitioner-appellant William Dunn appeals from the Hamilton County Common Pleas Court’s judgment denying his R.C. 2953.21 petition for postconviction relief. We affirm the court’s judgment.

Dunn was convicted in 2007 upon guilty pleas to conspiracy and cocaine possession and trafficking. He unsuccessfully appealed his convictions to this court² and to the Ohio Supreme Court.³ And he filed with the common pleas court a petition for postconviction relief. The common pleas court denied his petition, and Dunn appeals.

On appeal, Dunn presents a single assignment of error challenging the denial of his petition without a hearing. To prevail on a postconviction claim, the petitioner

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² See *State v. Dunn* (May 21, 2008), 1st Dist. No. C-070357.

³ See *State v. Dunn*, 119 Ohio St.3d 1502, 2008-Ohio-5467, 895 N.E.2d 565.

must demonstrate an infringement of his rights in the proceedings resulting in his conviction that rendered the conviction void or voidable under the state or federal constitution.⁴ The petitioner bears the initial burden of demonstrating, through his petition, supporting affidavits, and the case record, “substantive grounds for relief.”⁵ A common pleas court may dismiss a postconviction claim without a hearing if the petitioner failed to submit with his petition evidentiary material setting forth sufficient operative facts to demonstrate substantive grounds for relief.⁶

In his petition, Dunn claimed that he had been denied the effective assistance of counsel because his trial counsel had failed to move to suppress his arrest and the evidence seized incident to his arrest and a search of his apartment. A knowing, voluntary, and intelligent guilty plea waives any “independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”⁷ In our decision in Dunn’s direct appeal, we held that the record showed that Dunn had entered his guilty pleas knowingly, voluntarily, and intelligently. And Dunn did not support this postconviction claim with evidence outside the record that suggested otherwise. Thus, Dunn, by his knowing, voluntary, and intelligent guilty pleas, waived any challenge to his trial counsel’s failure to file a pretrial motion to suppress.⁸ Accordingly, we hold that the common pleas court properly denied this claim.

Dunn also contended in his petition that the trial court erred in failing to “hold a hearing” on his motion to withdraw his guilty pleas. At his sentencing hearing, Dunn

⁴ See R.C. 2953.21(A)(1); *State v. Powell* (1993), 90 Ohio App.3d 260, 264, 629 N.E.2d 13.

⁵ See R.C. 2953.21(C).

⁶ See *id.*; *State v. Pankey* (1981), 68 Ohio St.2d 58, 59, 428 N.E.2d 413; *State v. Jackson* (1980), 64 Ohio St.2d 107, 413 N.E.2d 819, syllabus.

⁷ *State v. Spates*, 64 Ohio St.3d 269, 272, 1992-Ohio-130, 595 N.E.2d 351, quoting *Tollett v. Henderson* (1973), 411 U.S. 258, 267, 93 S.Ct. 1602; accord *State v. Morgan*, 1st Dist. No. C-080011, 2009-Ohio-1370, ¶25.

⁸ See *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, 855 N.E.2d 48, ¶116.

orally moved to withdraw his pleas on the ground that the state had promised to give him “credit for things he had done to assist law enforcement.” The trial court did not hold an evidentiary hearing, but heard and fully considered arguments on the motion and overruled it. In Dunn’s direct appeal, we rejected his challenge to the overruling of his motion. And we here hold that the common pleas court properly denied his postconviction challenge to the trial court’s failure to conduct an evidentiary hearing on the motion. Dunn did not support his postconviction claim with outside evidence showing that an evidentiary hearing would have provided the trial court with “a reasonable and legitimate basis for the withdrawal of the plea[s].”⁹ Therefore, he could not be said to have been prejudiced by the trial court’s failure to afford him an evidentiary hearing on his motion.¹⁰

Dunn failed to support his postconviction claims with evidentiary material setting forth sufficient operative facts to demonstrate substantive grounds for relief. Therefore, we hold that the common pleas court properly denied his postconviction petition.¹¹ Accordingly, we overrule his assignment of error and affirm the court’s judgment.

A certified copy of this judgment entry constitutes 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., PAINTER and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on April 15, 2009

per order of the Court _____
Presiding Judge

⁹ *State v. Xie* (1992), 62 Ohio St.3d 521, 584 N.E.2d 715, paragraph one of the syllabus.

¹⁰ See *State v. Ashipa*, 1st Dist. No. C-060411, 2007-Ohio-2245, ¶18.

¹¹ See R.C. 2953.21(C); *Pankey*, 68 Ohio St.2d at 59; *Jackson*, 64 Ohio St.2d 107, syllabus.