

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

STATE OF OHIO,	:	APPEAL NO. C-110719
	:	TRIAL NOS. B-0905976
Respondent-Appellee,	:	B-0902712-A
vs.	:	<i>OPINION.</i>
JOHNNY GAMBLE,	:	
	:	
Petitioner-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: September 7, 2012

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Judith Anton Lapp*,
Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Johnny Gamble, pro se.

Please note: We have removed this case from the accelerated calendar.

Per Curiam.

{¶1} Defendant-appellant Johnny Gamble presents on appeal a single assignment of error challenging the Hamilton County Common Pleas Court’s judgment denying his postconviction petition. We reverse the court’s judgment.

{¶2} In December 2009, Gamble was convicted of felonious assault, rape, kidnapping, and aggravated robbery. He unsuccessfully appealed his convictions to this court and to the Ohio Supreme Court. *See State v. Gamble*, 191 Ohio App.3d 331, 2010-Ohio-6288, 945 N.E.2d 1135 (1st Dist.), *appeal not accepted*, 128 Ohio St.3d 1446, 2011-Ohio-1618, 944 N.E.2d 695.

{¶3} While his direct appeal was pending before this court, Gamble filed with the common pleas court an R.C. 2953.21 petition for postconviction relief. The common pleas court, upon “find[ing] that the case [was] in the Court of Appeals,” denied the petition “due to lack of jurisdiction.” We hold that the court erred in doing so.

{¶4} R.C. 2953.21(C) provides that a common pleas court “shall consider a petition that is timely filed under division (A)(2) of this section even if a direct appeal of the judgment is pending.” R.C. 2953.21(A)(2) requires a postconviction petitioner to file his petition within 180 days of the filing of the trial transcript in the direct appeal. The trial transcript in Gamble’s direct appeal was filed on March 4, 2010, and he filed his postconviction petition on August 25, 2010. Thus, regardless of Gamble’s pending appeal, R.C. 2953.21(C) conferred upon the common pleas court jurisdiction to entertain Gamble’s postconviction petition on its merits because he had filed his petition within the time prescribed by R.C. 2953.21(A)(2).

{¶5} Because the common pleas court erred in denying Gamble's postconviction petition for lack of jurisdiction, we sustain the assignment of error, reverse the court's judgment, and remand the case for further proceedings consistent with law and this opinion.

Judgment reversed and cause remanded.

HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, J.J.

Please note:

The court has placed of record its own entry in this case on the date of the release of this opinion.