

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

STATE OF OHIO :
Plaintiff-Respondent : **CASE NO. 1987 CR 05488**
vs. : **Judge McBride**
JERRY R. LAWSON : **DECISION/ENTRY**
Defendant-Petitioner :

Judith Brant, assistant prosecuting attorney for the state of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

Randall L. Porter, assistant state public defender for Jerry R. Lawson, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215-9308.

This cause is before the court for consideration of a post-conviction petition filed by the defendant-petitioner Jerry Lawson and a motion to dismiss this petition filed by the respondent state of Ohio.

After the filing of the final memorandum dealing with the state's motion to dismiss on July 8, 2013, the court took both the petition and the motion to dismiss under advisement.

Upon consideration of the petition and the motion, the record of the proceeding, the evidence presented for the court's consideration, the written arguments of counsel, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

On April 28, 1988, the petitioner Jerry R. Lawson was convicted of the following offenses:

(1) Aggravated Murder in violation of R.C. 2903.01(A) with specifications for (a) murder for the purpose of escaping detection, apprehension, trial or punishment for another offense in violation of R.C. 2929.04(A)(3); (b) murder committed while committing or attempting to commit the crime of kidnapping in violation of R.C. 2929.04(A)(7); (c) murder for the purpose to prevent a witness from testifying in a criminal proceeding in violation of R.C. 2929.04(A)(8); and, (d) possessing a firearm at the time of the offense;

(2) Aggravated Murder in violation of R.C. 2903.01(B) with specifications for (a) murder for the purpose of escaping detection, apprehension, trial or punishment for another offense in violation of R.C. 2929.04(A)(3); (b) murder committed while committing or attempting to commit the crime of kidnapping in violation of R.C. 2929.04(A)(7); (c) murder for the purpose to prevent a witness from testifying in a criminal proceeding in violation of R.C. 2929.04(A)(8); and, (d) possessing a firearm at the time of the offense;

(3) Aggravated Burglary in violation of R.C. 2911.11(A)(3);

(4) Kidnapping in violation of R.C. 2905.01(A)(2) with a firearm specification;

(5) Kidnapping in violation of R.C. 2905.01(B)(1) with a firearm specification; and,

(6) two counts of Intimidation in violation of R.C. 2921.03, with firearm specifications as to both counts and a serious harm specification as to Count Seven.

Judge Robert Ringland imposed a death penalty sentence for the two counts of aggravated murder and also imposed prison sentences as to the remaining counts for which the petitioner was convicted.

The petitioner filed a direct appeal to the Twelfth District Court of Appeals and all of the assignments of error were overruled and the convictions and death sentence were affirmed.¹ The decision was appealed to the Ohio Supreme Court which affirmed the convictions and sentence.² The petitioner attempted to appeal to the United States Supreme Court which denied his petition for certiorari.³

On December 15, 1993, the petitioner filed his first petition for post-conviction relief with the trial court. The court dismissed that petition on June 8, 1984 and that decision was subsequently affirmed and the Ohio Supreme Court declined to accept jurisdiction.⁴

Thereafter, the petitioner filed a habeas petition with the United States District Court for the Southern District of Ohio, and the magistrate hearing that petition granted the petitioner discovery rights and an evidentiary hearing on his petition.⁵ Some of the testimony and information provided at that hearing forms the basis of the petitioner's grounds for relief in the present petition and will be discussed below.

¹ *State v. Lawson* (June 4, 1990), 12th Dist. No. CA88-05-044, 1990 WL 73845.

² *State v. Lawson* (1992), 64 Ohio St.3d 336, 595 N.E.2d 902.

³ *Lawson v. Ohio* (1993), 507 U.S. 1007, 113 S.Ct. 1653, 123 L.Ed.2d 273.

⁴ *State v. Lawson*, 103 Ohio App.3d 307, 659 N.E.2d 362 (Ohio App. 12th Dist., 1995); and, (1995), 74 Ohio St.3d 1404; reconsideration denied (1995), 74 Ohio St.3d 1459 .

⁵ Transcripts of Hearings in the case of *Lawson v. Warden*, held on March 4th and December 2-4 and 8-10, 1997.

On June 6, 2003, the petitioner filed a second petition for post-conviction relief which was primarily based on claims that the petitioner was mentally retarded. This petition was amended on March 12, 2004. On June 7, 2004, summary judgment was granted on all but the second cause of action. An evidentiary hearing was held with regard to the second cause of action, which involved claims that Lawson was mentally retarded, and that cause of action was denied by entry on November 7, 2007. The decision was affirmed by the court of appeals and the Ohio Supreme Court declined jurisdiction to hear an appeal from that decision.⁶

The petitioner's third petition for post-conviction relief was filed on August 19, 2003. A decision was not issued on that petition by the original trial court. After a request for decision was filed by the petitioner regarding the third petition, the case was randomly assigned to this court. The court issued a written decision denying the third petition on July 1, 2011. That decision was upheld by the court of appeals and the Ohio Supreme Court declined to accept jurisdiction.⁷

On April 4, 2013, the petitioner filed his fourth petition for post-conviction relief, raising sixteen grounds for relief therein. The state filed a motion to dismiss the petition on April 15, 2013, arguing that the petition is without merit, is barred by the doctrine of *res judicata*, and fails to meet the burden set forth under R.C. 2953.23(A).

LEGAL ANALYSIS

⁶ *State v. Lawson* (Nov. 24, 2008), 12th Dist. No. CA2007-12-116, 2008-Ohio-6066; and (2009), 123 Ohio St.3d 1523, 918 N.E.2d 525.

⁷ *State v. Lawson* (Feb. 13, 2013), 12th Dist. No. CA2011-07-056, 2013-Ohio-548; and (2013), 135 Ohio St.3d 1431, 2013-Ohio-1857, 986 N.E.2d 1021, reconsideration denied, (2013), 136 Ohio St.3d 1453, 2013-Ohio-3210, 991 N.E.2d 259.

Pursuant to R.C. 2953.23:

“(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) of this section applies:

(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.

(2) The petitioner was convicted of a felony, the petitioner is an offender for whom DNA testing was performed under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code, and the results of the DNA testing establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death.

As used in this division, ‘actual innocence’ has the same meaning as in division (A)(1)(b) of section 2953.21 of the Revised Code, and “former section 2953.82 of the Revised Code” has the same meaning as in division (A)(1)(c) of section 2953.21 of the Revised Code.”

(A) FIRST GROUND FOR RELIEF AND CHALLENGE TO JURISDICTIONAL STATUTE

In his jurisdictional statement in this fourth petition for post-conviction relief, the petitioner challenges the constitutionality of R.C. 2953.23(A) on several constitutional bases. Further, in his first ground for relief, the petitioner argues that his convictions and sentences are void or voidable because Ohio’s post-conviction procedures do not provide an adequate corrective process in violation of the constitutional rights afforded him.

In its decision upholding the denial of the petitioner’s third petition for post-conviction relief, the Twelfth District Court of Appeals addressed the constitutionality of Ohio’s post-conviction relief statutory scheme and found such to be constitutional.⁸ Other courts have similarly upheld Ohio’s post-conviction relief statutory scheme as constitutional.⁹ The petitioner’s jurisdictional argument regarding the use of “may” in R.C. 2953.23(A) has also been addressed in Ohio law and it has been held that “[a]lthough ‘may’ generally implies discretion to do an act, there is no meaningful

⁸ *State v. Lawson*, supra, 2013-Ohio-548, ¶¶ 26-33, citing, e.g., *State v. McGuire* (April 23, 2001), 12th Dist. No. CA2000-01-011, 2001 WL 409424. See, also, *State v. Cowans* (Sept. 7, 1999), 12th Dist. No. CA98-10-090, 1999 WL 699870, *3 (“Although Civ.R. 35(A) does require brevity in arguing each individual claim, we find the page limitation constitutional.”).

⁹ See, e.g., *State v. La Mar* (March 17, 2000), 4th Dist. No. 98-CA-23, 2000 WL 297413, *2-5; and, *State v. McGrath* (March 1, 2012), 8th Dist. No. 97207, 2012-Ohio-816, ¶¶ 12-14.

difference between ‘may not’ and ‘shall not’ as it is used in R.C. 2953.23(A).”¹⁰ As such, the jurisdictional requirements of R.C. 2953.23(A) are mandatory, not permissive.¹¹

The petitioner’s constitutional challenges to Ohio’s post-conviction relief statutes are hereby overruled and his first ground for relief is hereby denied.

(B) SECOND AND THIRD GROUNDS FOR RELIEF

In the second ground for relief, the petitioner claims that he is presently incompetent and asks this court to stay these post-conviction proceedings until he is restored to competency. In his third ground for relief, he argues that his conviction and sentence are void or voidable because he was incompetent at the time of the pretrial, trial, and sentencing proceedings.

The opinions and IQ scores given for the petitioner by Dr. Nelson and Dr. Fabian is the same evidence examined in the petitioner’s second petition for post-conviction relief. The Twelfth District Court of Appeals thoroughly examined this evidence and found that the petitioner was not mentally retarded.¹²

The fact that the petitioner has been administered anti-psychotic medications while incarcerated¹³ does not establish that he is currently mentally incompetent. Furthermore, the fact that the defendant has been diagnosed with a mental illness, namely major depressive disorder severe recurrent with psychotic features, does not mean that he is currently incompetent and, in fact, some of the more recent records

¹⁰ *State v. Conway* (Aug. 29, 2013), 10th Dist. No. 12AP-412, 2013-Ohio-3741, ¶ 64

¹¹ *Id.*

¹² *Lawson*, *supra*, 2008-Ohio-6066, ¶¶ 12-37.

¹³ Petitioner’s Exhibits 13A-T.

from 2008 and 2009 cited to by the petitioner indicate that he was stable.¹⁴ The written notes from 2012 do not indicate any episodes of incompetency and indicate that the petitioner is still compliant with his medications.¹⁵

The court would also note that the petitioner relies heavily in his third ground for relief upon the testimony given by Dr. Jolie Brams at the federal habeas proceeding on December 3, 1997.¹⁶ Therefore, this testimony has been in the petitioner's possession since that time and has been available to him for approximately fifteen years. The petitioner was not unavoidably prevented from the discovery of these facts until this time and, in fact, the petitioner's second and third post-conviction relief petitions were filed after the federal hearing, and the petitioner's second post-conviction petition specifically raised the issue of mental retardation, relying in part upon the testimony given by Dr. Brams at the federal hearing. The court would further note that Dr. Brams provided an affidavit in support of the defendant's first petition for post-conviction relief, as noted in the second petition.¹⁷

The petitioner's second and third grounds for relief are hereby denied.

(C) FOURTH AND FIFTH GROUNDS FOR RELIEF

The petitioner's fourth ground for relief states that his convictions are void or voidable because he was denied effective assistance of experts during the trial and

¹⁴ See, e.g., Petitioner's Exhibits 13D and 13F

¹⁵ Petitioner's Exhibits 13I and J.

¹⁶ Transcript of Hearing, Volume V, pg. 831-833.

¹⁷ Jerry Lawson's Mental Retardation Petition, filed June 6, 2003, pg. 6.

mitigation stages of his capital case. The petitioner argues that he did not have the benefit of a competent psychological evaluation at either phase of the trial.

In the fifth assignment of error, the petitioner argues that, prior to and during the trial and sentencing phases, defense counsel failed to identify the need for a neuropsychological interview and the mental health professionals failed to identify the need for defense counsel to request funding for a neuropsychologist to evaluate the petitioner.

The issue of defense counsel failing to present evidence regarding a mental disease or defect during trial was raised in the first post-conviction petition and denied.¹⁸

Furthermore, the defendant has had multiple opportunities on direct appeal and in the previous post-conviction petitions to raise ineffective assistance of counsel claims and claims relating to his mental state and the lack of evidence presented thereof. There is no new evidence presented in support of these arguments that has not been available to the defendant for many years. There was no demonstration that the defendant has been unavoidably prevented from discovering this information until the present time.

As such, the petitioner's fourth and fifth grounds for relief are hereby denied.

(D) SIXTH, SEVENTH, AND EIGHTH GROUNDS FOR RELIEF

In the petitioner's sixth, seventh, and eighth grounds for relief, he makes several arguments that certain information and documents were not provided to defense counsel in violation of *Brady v. Maryland*.

¹⁸ *State v. Lawson*, supra, 103 Ohio App. 3d at 313-315.

“The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution imposes upon the state a duty to disclose to the accused evidence material to his guilt or innocence.”¹⁹ “The duty extends to ‘any favorable evidence known to the others acting on the government’s behalf in the case, including the police.’”²⁰ “A *Brady* violation involves the post-trial discovery of information that was known to the prosecution, but unknown to the defense.”²¹

In *Brady v. Maryland* (1963), 373 U.S. 87, 83 S.Ct. 1194, 10 L.Ed.2d 215., the United States Supreme Court held that “ ‘the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.’”²² “Evidence is ‘material’ only if there is a reasonable probability that the proceeding would have turned out differently had the evidence been disclosed to the defense.”²³ “ ‘A successful *Brady* claim requires a three-part showing: (1) that the evidence in question be favorable; (2) that the state suppressed the relevant evidence, either purposefully or inadvertently; (3) and that the state’s actions resulted in prejudice.’”²⁴ “Further, it is the burden of the defense to prove a *Brady* violation has risen to the level of denial of due process.”²⁵

¹⁹ *Conway*, supra, 2013-Ohio-3741, ¶ 25, citing *Brady v. Maryland* (1963), 373 U.S. 87, 83 S.Ct. 1194, 10 L.Ed.2d 215.

²⁰ *Id.*, citing, *Kyles v. Whitley* (1995), 514 U.S. 419, 437, 115 S.Ct. 1555, 131 L.Ed.2d 490.

²¹ *Id.*, citing, *State v. Wickline* (1990), 50 Ohio St.3d 114, 116, 552 N.E.2d 913.

²² *State v. Stojetz* (June 7, 2010), 12th Dist. No. CA2009-06-013, 2010-Ohio-2544, ¶ 12, quoting *Brady*, supra, 373 U.S. at 87.

²³ *Id.*, citing, *United States v. Bagley* (1985), 473 U.S. 667, 682, 105 S.Ct. 3375.

²⁴ *Id.*, quoting, *State v. Davis* (Dec. 23, 2008), 5th Dist. No.2008-CA-16, 2008-Ohio-6841, ¶ 53, citing *Strickler v. Greene* (1999), 527 U.S. 263, 281-282, 119 S.Ct. 1936.

²⁵ *Id.*, citing *State v. Jackson* (1991), 57 Ohio St.3d 29, 33, 565 N.E.2d 549.

The petitioner's arguments in the sixth, seventh and eighth grounds for relief generally revolve around statements and evidence that would contradict the testimony given at trial by Timothy Lawson.

First, the state's failure to disclose documents containing the statements of Sue Payton and Williams S. Payton has been previously raised by the petitioner on his initial direct appeal, and the court of appeals found that they contained nothing favorable to the defense and, as such, there was no *Brady* violation.²⁶ The Ohio Supreme Court also noted that "whatever may be considered even remotely favorable to the accused had been disclosed to the defense through other means."²⁷ As this issue has been litigated previously on direct appeal and the court sees no new issues raised, consideration of the *Brady* argument with regard to Exhibits 6, 7, 8, 23, and 24 and the information contained therein is barred by the doctrine of *res judicata*.

Furthermore, the letters written by Judge William Walker to the prosecuting attorney regarding William Payton's outstanding felony warrant are not exculpatory nor would they be material to the petitioner's guilt or innocence. Therefore, any failure by the state to provide trial counsel with these letters did not constitute a *Brady* violation.

With regard to Exhibit 9, the issue of the state's failure to disclose this written statement was previously addressed by this court in its decision denying the third post-conviction petition and that decision was upheld on appeal. This court determined that the petitioner failed to establish by clear and convincing evidence that, but for this violation, no reasonable factfinder would have found him guilty of the offenses charged. The arguments presented in the present post-conviction petition offer nothing new with

²⁶ *State v. Lawson*, supra, 64 Ohio St.3d at 342-345.

²⁷ *Id.* at 344.

regard to this issue and, as such, the court finds no *Brady* violation with regard to this exhibit or the information contained therein.

This leaves for discussion Exhibits 4 and 5 and the information contained therein. Exhibit 4 contains notes made by Sergeant Stemen from a phone conversation with Detective Randy Harvey on October 2, 1987. In those notes, there is an indication that Tim Lawson threatened both Harvey and Tim Martin and told Martin “no Harvey no case[.]”²⁸ It also indicates that Tim Lawson told Martin that if he was the one informing on him, he would “do him in.”²⁹ Timothy Martin, the victim in the present case, was in fact providing information to Detective Harvey of the Clermont County Sheriff’s Office that Tim Lawson and the petitioner were involved in the burglary at the residence of Cheryl Titus.³⁰

Exhibit 5 also contains notes made by Sergeant Stemen indicating that Timothy Lawson contacted him shortly after he was arrested on aggravated burglary warrants wanting to provide information about Martin.³¹ The notes indicate that Timothy Lawson stated that if he found out Detective Harvey was getting information from Martin, he would kill Martin.³²

These exhibits and the information provided therein is not material to guilt or punishment in that there is not a reasonable probability that the proceeding would have turned out differently had the evidence been disclosed to the defense. It was well known at trial that Timothy Lawson was part of the plan to beat the victim and that, the morning of the murder, the petitioner and his brother were heard discussing their mutual hatred

²⁸ Petitioner’s Exhibit 4.

²⁹ *Id.*

³⁰ *State v. Lawson*, supra, 64 Ohio St.3d at 336.

³¹ Petitioner’s Exhibit 5.

³² *Id.*

of Martin and that they came up with a plan to severely beat Martin.³³ There was also testimony that a month or so earlier, Tim Lawson and the petitioner were overheard saying that Martin “needed to be taken care of” and that they needed to “get rid of him” in order to prevent him from testifying against them.³⁴

It was no secret to the jury that Timothy Lawson hated the victim and that he had at least one prior conversation with his brother that they needed to “get rid of him.” Therefore, further evidence that Tim Lawson threatened Martin’s life is not material to the defendant’s guilt or innocence. It further does not change the fact that the testimony offered at trial was that, while Tim Lawson, Billy Payton and the petitioner were all present, it was the petitioner who pulled the gun and shot Martin and who later kicked Martin multiple times as he begged to be taken to a hospital.³⁵

Due to the fact that this evidence is not material under the *Brady* standard, the petitioner has not established prejudice as a result of the withholding of this evidence.

Therefore, the petitioner’s sixth, seventh, and eighth grounds for relief are hereby denied.

(E) NINTH GROUND FOR RELIEF

In his ninth ground for relief, the petitioner argues that his convictions and sentences are void or voidable because of prosecutorial misconduct occurring prior to and during his trial, which violated his right to due process and effective assistance of

³³ *Lawson*, supra, 64 Ohio St.3d at 336.

³⁴ *Id.*

³⁵ *Id.* at 337-338.

counsel. Specifically, the petitioner argues it was improper for the prosecutor to advise Billy Payton not to speak with defense counsel in the hallway of the courthouse.

The issues involving Billy Payton and the advice of the prosecutor that he not speak with defense counsel on one occasion was dealt with in this court's decision denying the third post-conviction petition, which was upheld on appeal.³⁶ As such, consideration of this issue is barred by *res judicata*. The court notes that even if consideration of this issue were not barred, this court would not alter its conclusion that the prosecution was not attempting to hide Billy Payton from the defense and, as such, this court would conclude that there was no evidence of prosecutorial misconduct.

The petitioner's ninth ground for relief is hereby denied.

(F) TENTH GROUND FOR RELIEF

The petitioner argues in his tenth ground for relief that his convictions and sentences are void or voidable because the trial prosecutors "knowingly presented and failed to correct false testimony and argument to obtain the convictions and death sentence in the present case."

The petitioner makes several specific arguments regarding the alleged "false" testimony and all those arguments are based on testimony given by Billy Payton at the federal habeas hearing and statements given by Payton around the time of the murder, which are evidenced in exhibits and discussed by other witnesses at the federal hearing.

³⁶ *Lawson*, supra, 2013-Ohio-548.

As noted by the Twelfth District Court of Appeals, this case does not present a situation where “an interview with Payton could illuminate *decisive* information to Lawson's defense.”³⁷ The fact that Billy Payton has a different version of the events that transpired with regard to this incident does not make Tim Lawson’s testimony false. The state is permitted to make determinations as to what witnesses it finds to be credible and is not required to restrict itself from presenting a witness’s testimony simply because another witness’s testimony may differ factually. The suggestion that the prosecutors presented false testimony and argument is not supported by the record of this case.

As such, the tenth ground for relief is hereby denied.

(G) ELEVENTH GROUND FOR RELIEF

In his eleventh ground for relief, the petitioner argues that his convictions and sentences are void or voidable because the state’s expert, Roger Fisher, was “provided incomplete and inaccurate information during the trial phase[.]” and the petitioner argues that this testimony was the product of prosecutorial misconduct.

Dr. Fisher was the state’s expert psychological witness and he testified at trial that the petitioner was not insane at the time of the offenses. He stated at the federal habeas hearing that the statements made by Billy Payton add “a new perspective with some details and information which clearly need to be assessed and weighed concerning their relevance to the issue of [the petitioner’s] mental state[.]”³⁸ Dr. Fisher

³⁷ *Lawson*, supra, 2013-Ohio-548, ¶ 47.

³⁸ Federal Habeas Hearing Transcript at pg. 689.

found the information provided by Payton to create “a new perspective” and to have a significant impact on his assessment of the petitioner’s mental state.³⁹

Dr. Fisher stated at the trial in this case that he received more information from the state than he actually needed and that “more information is interesting * * * but its interest is in expanding my awareness of the person but I don’t think it necessarily contributes to answering the questions.”⁴⁰

As discussed in the section above, the state was not required to present or believe the statement of Billy Payton, as the prosecutor is permitted to make decisions as to what information it finds to be credible. Furthermore, and more importantly, Dr. Fisher did not ask for anything specific from the state that he did not receive. The court fails to see any prosecutorial misconduct in not providing its expert with testimony that it may have not found to be credible or that it had determined would not be used in its case-in-chief.

Additionally, the testimony of Dr. Fisher, which is the basis of this ground for relief, has been available to the petitioner at least since the habeas petition in 1997. The petitioner was not unavoidably prevented from discovering this information until now and failed to include this argument in two of his prior petitions filed after the habeas hearing.

For these reasons, the petitioner’s eleventh ground for relief is denied.

(H) TWELFTH AND THIRTEENTH GROUNDS FOR RELIEF

³⁹ Id. at pgs. 690-691.

⁴⁰ Id. at 689-690.

The twelfth ground for relief raised by the petitioner argues that his convictions and sentences are void or voidable because he was denied effective assistance of counsel at the trial phase and the thirteenth ground for relief argues the same for the mitigation phase.

None of the arguments raised in support of these grounds for relief is new information or information which could not have been raised on direct appeal or in a previous petition for post-conviction relief. The fact that trial counsel did not file a motion to suppress, interview certain witnesses including Billy Payton, retain a psychologist and neuropsychologist, timely request the appointment of the mitigation investigation, or make certain objections to the admission of evidence, was not anything unknown the defendant at the time of his initial appeal or in the years thereafter. As such, this is not any information that the petitioner was unavoidably prevented from discovering.

Therefore, the petitioner's twelfth and thirteenth grounds for relief are hereby denied.

(I) FOURTEENTH GROUND FOR RELIEF

In his fourteenth ground for relief, the petitioner argues that his convictions and sentences are void or voidable because the trial court permitted FBI Special Agent Watson to testify to hearsay statements made by Billy Payton and Sue Payton.

There is nothing in the record suggesting that this argument regarding the admission of alleged hearsay testimony could not have been raised on direct appeal or in any of the preceding post-conviction petitions. The evidence admitted at trial was well

known to the defendant and his appellate counsel and he was not unavoidably prevented from discovering it.

As a result, the petitioner's fourteenth ground for relief is hereby denied.

(J) FIFTEENTH GROUND FOR RELIEF

The petitioner's fifteenth ground for relief argues that his conviction is void or voidable because the trial court admitted custodial statements that were taken in violation of the rights afforded to him pursuant to *Miranda v. Arizona*.

Again, the fact that the petitioner's trial counsel failed to file a motion to suppress with regard to the admission of his statements is not a fact which was not known to the petitioner or his first appellate counsel. This is not information he was unavoidably prevented from discovering until now or from raising on direct appeal or in any preceding post-conviction petition.

Therefore, the petitioner's fifteenth ground for relief is hereby denied.

(K) SIXTEENTH GROUND FOR RELIEF

In the petitioner's final ground for relief he argues that the cumulative effects of all of the grounds for relief contained in his fourth petition and the facts relied upon for those grounds for relief demonstrate that he had been denied his constitutional rights.

As discussed above, the court has not found any errors evidenced by the above claimed grounds for relief. The majority of the information relief upon in this petition is

old information that does not meet the standard set forth by R.C. 2953.23(A) and none of the information has demonstrated that the defendant was denied his constitutional rights.

Considering all of the grounds for relief and the arguments and information set forth therein, the petitioner has failed to demonstrate a cumulative effect that establishes that he has been denied his constitutional rights.

CONCLUSION

The petitioner's fourth post-conviction petition is not well-taken and is hereby denied in its entirety for the reasons set forth above.

The state's motion to dismiss the petition is consequently rendered moot.

IT IS SO ORDERED.

DATED: _____

Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile/E-Mail/Regular U.S. Mail this 14th day of November 2013 to all counsel of record and unrepresented parties.

Administrative Assistant to Judge McBride