

[Cite as *State v. Bridgewater*, 2012-Ohio-6167.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, : No. 12AP-428
 : (C.P.C. No. 06CR-11-8408)
 v. :
 : (REGULAR CALENDAR)
 Dominique Bridgewater, :
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on December 27, 2012

Ron O'Brien, Prosecuting Attorney, and *Kimberly M. Bond*,
for appellee.

Dominique Bridgewater, pro se.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶1} This is an appeal by defendant-appellant, Dominique Bridgewater, from a judgment of the Franklin County Court of Common Pleas denying appellant's motion for production of grand jury evidence and testimony.

{¶2} On November 8, 2006, appellant was indicted on one count of aggravated murder with a firearm specification. Following a jury trial, appellant was found guilty of the lesser-included offense of murder. The trial court imposed a sentence of 15 years to life on the murder charge, and an additional three-year consecutive sentence on the firearm specification.

{¶3} Appellant appealed his conviction, raising three assignments of error in which he asserted that: (1) the trial court erred in failing to instruct on the inferior offense of voluntary manslaughter; (2) trial counsel rendered ineffective assistance of counsel in

failing to request the court to give an instruction on voluntary manslaughter; and (3) the conviction for murder was against the manifest weight of the evidence. In *State v. Bridgewater*, 10th Dist. No. 07AP-535, 2008-Ohio-466, this court overruled all of appellant's assignments of error and affirmed the judgment of the trial court.

{¶4} On November 11, 2011, appellant filed a motion for production of evidence and testimony presented to the grand jury. On November 23, 2011, the state filed a memorandum in opposition to the motion. By decision and entry filed on January 23, 2012, the trial court denied appellant's motion.

{¶5} On appeal, appellant sets forth the following four assignments of error for this court's review:

FIRST ASSIGNMENT OF ERROR

THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT, DEPRIVING APPELLANT OF SUBSTANTIAL RIGHTS, WHEN DENYING HIS REQUEST FOR GRAND JURY TRANSCRIPTS.

SECOND ASSIGNMENT OF ERROR

PROSECUTORIAL MISCONDUCT BEFORE THE GRAND JURY PREJUDICED APPELLANT AND VIOLATED HIS SUBSTANTIAL RIGHTS.

THIRD ASSIGNMENT OF ERROR

APPELLANT WAS PREJUDICED AND DEPRIVED OF HIS SUBSTANTIAL RIGHTS BY THE DEFICIENT PERFORMANCE OF DEFENSE COUNSEL.

FOURTH ASSIGNMENT OF ERROR

APPELLANT WAS PREJUDICED AND DENIED A FAIR TRIAL, DUE PROCESS AND EQUAL PROTECTION OF THE LAWS BY THE GRAND JURY'S FAILURE TO PROPERLY ISSUE AN INDICTMENT AS GOVERNED BY SECTION 10, ARTICLE 1 OF THE OHIO CONSTITUTION AND THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION.

{¶6} Appellant's four assignments will be addressed together. Under these assignments of error, appellant asserts that: (1) the trial court erred in denying his request

for grand jury transcripts; (2) the prosecutor engaged in misconduct before the grand jury proceedings; (3) trial counsel was ineffective in failing to recognize irregularities in the grand jury proceedings; and (4) appellant was prejudiced by the grand jury's failure to issue a proper indictment.

{¶7} We first address appellant's contention that the trial court erred in failing to grant his motion seeking the production of grand jury records. In the motion, appellant argued that the prosecutor possessed evidence in the form of an eyewitness statement obtained on October 13, 2006, indicating that appellant was lured by the shooting victim to the victim's address as part of a plan to rob appellant. Appellant argued that the prosecutor was aware that appellant's purpose in going to the decedent's residence was to conduct a drug transaction, and there never existed a prior calculation and design on appellant's part to commit aggravated murder. According to appellant, the prosecutor's failure to disclose such facts misled the grand jury into returning an indictment for aggravated murder (i.e., a crime requiring evidence of prior calculation and design). In support of his motion, appellant cited the trial testimony of Steven Ferrell.

{¶8} In denying appellant's motion, the trial court noted that appellant presented no case law to support his "rather unique proposition" that the jury's decision to convict him of a lesser-included offense somehow rendered his indictment defective. The court further determined that appellant's claims were barred by the doctrine of res judicata.

{¶9} Under Ohio law, "[g]rand jury proceedings are secret, and an accused is not entitled to inspect grand jury transcripts either before or during trial unless the ends of justice require it and there is a showing by the defense that a particularized need for disclosure exists which outweighs the need for secrecy." *State v. Greer*, 66 Ohio St.2d 139 (1981), paragraph two of the syllabus. Ohio courts, including this court, have held that where "there was no pending matter within the jurisdiction of the trial court involving defendant's criminal case that would necessitate further discovery," a trial court lacks authority to grant a defendant's motion for production of grand jury testimony. *State v. Russell*, 10th Dist. No. 05AP-1325, 2006-Ohio-5945, ¶ 10, citing *State v. Short*, 8th Dist. No. 83492, 2004-Ohio-2695, ¶ 7 ("With no pending motions that would necessitate further discovery, the judge lacked the jurisdiction to review the particularized need for an

in camera inspection"). Furthermore, "[a] defendant is not entitled to discovery in post-conviction proceedings." *State v. Ricks*, 2d Dist. No. CA 24941, 2012-Ohio-3851, ¶ 14.

{¶10} In the present case, there was no matter pending before the trial court at the time of appellant's motion, and thus the motion lacked a valid jurisdictional basis. *Russell* at ¶ 10. *See also State v. Herring*, 5th Dist. No. 1996 CA 00385 (Mar. 17, 1997) (court "unaware of any procedural or substantive rule of law which authorizes the court to, in essence, order post-conviction discovery absent the filing of a post-conviction relief petition supported by appropriate affidavits"). Further, even assuming jurisdiction, appellant failed to show a particularized need for the materials, as we agree with the trial court that appellant has cited no authority for the "unique proposition" that he was entitled to grand jury materials because he was convicted of a lesser offense than the indicted offense.

{¶11} Further, with respect to the arguments raised under the second, third, and fourth assignments of error, addressing claims for prosecutorial misconduct, ineffective assistance of counsel, and due process concerns with respect to grand jury proceedings, we agree with the state and the trial court that those matters are barred by the doctrine of *res judicata*, as each of the claims could have been raised either on direct appeal or in a timely petition for post-conviction relief. *See State v. Szefcyk*, 77 Ohio St.3d 93 (1996), syllabus ("Under the doctrine of *res judicata*, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment of conviction, or on an appeal from that judgment") (Emphasis sic.).

{¶12} Based upon the foregoing, appellant's first, second, third, and fourth assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

SADLER and DORRIAN, JJ., concur.
