

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	Nos. 12AP-811
Plaintiff-Appellee,	:	and
	:	12AP-812
v.	:	(C.P.C. No. 08CR-3419)
Howard Boddie, Jr.,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 12, 2013

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*,
for appellee.

Howard Boddie, Jr., pro se.

APPEALS from the Franklin County Court of Common Pleas

O'GRADY, J.

{¶ 1} In these consolidated appeals, defendant-appellant, Howard Boddie, Jr., appeals from judgments entered by the Franklin County Court of Common Pleas denying his July 26, 2011 "petition to vacate or set aside judgment of conviction or sentence" and June 1, 2012 "motion to vacate sentence." For the reasons that follow, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On May 6, 2008, appellant was indicted on one count of domestic violence, in violation of R.C. 2919.25, and one count of abduction, in violation of R.C. 2905.02, both felonies. A jury returned a verdict finding appellant guilty of the charged offenses. The trial court sentenced appellant to an aggregate prison term of five years with three years of post-release control.

{¶ 3} Appellant, through new counsel, argued on appeal that he was denied his right to a speedy trial and the effective assistance of trial counsel. This court rejected appellant's contentions and affirmed the judgment of the trial court. *State v. Boddie*, 10th Dist. No. 10AP-687, 2011-Ohio-3309.

{¶ 4} On July 26, 2011, appellant filed a "petition to vacate or set aside judgment of conviction or sentence." Therein, appellant again claimed that he had been denied the effective assistance of trial counsel. He also alleged that law enforcement threatened to pursue criminal charges against the victim if she refused to testify against him, and in turn, she committed perjury. Appellant asserted that the victim's health history and prior criminal convictions affected her credibility. Appellant attached several unsworn documents to his petition. Among these documents were letters that appellant claimed were written by the victim, including one in which the victim stated that appellant "did not abduct" her. (R. 213.)

{¶ 5} On June 1, 2012, appellant filed a "motion to vacate sentence," which again raised an ineffective assistance of trial counsel claim and also alleged he was denied his right to a speedy trial.

{¶ 6} On September 8, 2011, without holding a hearing, the trial court denied the July 26, 2011 petition because the issues raised by appellant were barred by the doctrine of res judicata. The trial court also denied appellant's June 1, 2012 motion to vacate his sentence on August 15, 2012 without holding a hearing. The court reasoned that res judicata precluded appellant from raising the issue of a speedy trial violation, and he failed to support the substantive requirements for his ineffective assistance of counsel claim. Appellant appealed from the judgments of the trial court, and this court consolidated the appeals.

II. ASSIGNMENTS OF ERROR

{¶ 7} Appellant assigns three errors for our consideration:

[I.] Appellant contends that the trial court committed plain and prejudicial error, and denied him due process and equal protection of law when the trial court denied appellant's motion for post-conviction relief without (1) holding a formal hearing/evidentiary hearing on his misconduct claims, and (2) for denying the petition without providing findings of facts and conclusions of law in violation of appellant's U.S.

constitutional rights to meaningful access-to-the court founded under the 1st, and 14th amendments.

[II.] Appellant contends that he was denied due process and meaningful access-to-the-courts when the trial court denied appellant's post-conviction motion on res-judicata grounds in violation of appellant's 1st and 14th amendment rights under the United States Constitution.

[III.] Appellant contend that the trial court violated his constitutional rights to meaningful access-to-the courts, due process, and equal protection of law under the 1st and 14th amendments to the U.S. Constitutions when the court deliberately ignored evidence presented that appellant suffered ineffective assistance of counsel at trial.

Appellant's assignments of error are interrelated and will be addressed together.

III. DISCUSSION

{¶ 8} We construe appellant's filings as petitions for postconviction relief. *State v. Mitchell*, 10th Dist. No. 12AP-572, 2013-Ohio-1059, ¶ 5; *State v. Timmons*, 10th Dist. No. 11AP-895, 2012-Ohio-2079, ¶ 6, citing *State v. Reynolds*, 79 Ohio St.3d 158, 160 (1997); *State v. McAllister*, 10th Dist. No. 06AP-843, 2007-Ohio-1816, ¶ 6 (vaguely titled motion to correct or vacate sentence should be construed as motion for postconviction relief under R.C. 2953.21); *State v. Holdcroft*, 3d Dist. No. 16-06-07, 2007-Ohio-586, ¶ 11 (motion raising a claim for denial of rights and seeking to void a judgment and vacate sentence filed after the time for a direct appeal had passed is properly construed as petition for postconviction relief).

{¶ 9} A petition for postconviction relief is a collateral civil attack on a criminal judgment, not an appeal of that judgment. *State v. Steffen*, 70 Ohio St.3d 399, 410 (1994). "It is a means to reach constitutional issues which would otherwise be impossible to reach because the evidence supporting those issues is not contained" in the trial court record. *State v. Murphy*, 10th Dist. No. 00AP-233 (Dec. 26, 2000). Postconviction review is a narrow remedy which affords a petitioner no rights beyond those granted by statute. *State v. Calhoun*, 86 Ohio St.3d 279, 281 (1999).

{¶ 10} A trial court "may dismiss a petition for postconviction relief without holding an evidentiary hearing when the doctrine of res judicata bars the claims raised in

the petition." *State v. Wright*, 10th Dist. No. 08AP-1095, 2009-Ohio-4651, ¶ 11. Res judicata bars a defendant who was represented by counsel during the proceeding in which a final judgment of conviction has been entered from raising and litigating any defense or claimed lack of due process in any proceeding other than an appeal from that judgment. *State v. Szefcyk*, 77 Ohio St.3d 93 (1996), syllabus. "[T]o avoid dismissal of the petition under the doctrine of res judicata, the evidence supporting the claim must be competent, relevant, and material evidence outside the trial court record, and *it must not be evidence that existed or was available for use at the time of the trial.*" (Emphasis added.) *Wright* at ¶ 11. Res judicata thus " 'implicitly bars a petitioner from "repackaging" evidence or issues which either were, or could have been, raised in the context of the petitioner's trial or direct appeal.' " *State v. Cochran*, 10th Dist. No. 12AP-73, 2012-Ohio-4077, ¶ 11, quoting *State v. Hessler*, 10th Dist. No. 01AP-1011, 2002-Ohio-3321, ¶ 27.

{¶ 11} A trial court's decision to deny a postconviction petition without a hearing is reviewed under the abuse of discretion standard. *State v. Campbell*, 10th Dist. No. 03AP-147, 2003-Ohio-6305, ¶ 14, citing *Calhoun* at 284. An abuse of discretion entails a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 12} In this appeal, appellant raises three grounds in support of his petitions. First, appellant contended he received ineffective assistance of trial counsel. Specifically, appellant asserted that his trial counsel never consulted with him prior to trial to discuss strategy or perform additional case investigation. Appellant also argued his trial counsel was deficient because he did not file a motion to dismiss on speedy trial grounds. However, appellant first pursued these arguments in his direct appeal. We found appellant failed to establish there was a reasonable probability a motion to dismiss on speedy trial grounds would have been successful, or that he suffered prejudice because his lawyer did not confer with him before trial. *Boddie* at ¶ 7-14. Because appellant raised these issues on direct appeal, he is barred from doing so again now. See *State v. Young*, 10th Dist. No. 05AP-641, 2006-Ohio-1165, citing *State v. Lentz*, 70 Ohio St.3d 527, 529-30 (1994).

{¶ 13} Appellant next contended that the prosecutor knowingly suborned perjury, and that his trial counsel was aware that the state's witnesses provided false testimony.

Appellant's claims regarding perjury are based on information in the record, including certain evidence that was suppressed by the trial court. Appellant had the opportunity to raise arguments about the information in the record and exclusion of this evidence in his direct appeal and failed to do so.¹ Moreover, mere inconsistencies in testimony by government witnesses do not establish knowing use of false testimony. *State v. Widmer*, 12th Dist. No. CA2012-02-008, 2013-Ohio-62, ¶ 38, citing *Coe v. Bell*, 161 F.3d 320, 343 (6th Cir.1998). Evidence of perjury, without proof of knowledge on the part of the prosecution, does not implicate constitutional rights and thus does not support a petition for postconviction relief. *State v. Jones*, 10 Dist. No. 06AP-62, 2006-Ohio-5953, ¶ 25.

{¶ 14} Finally, appellant asserted that certain statements made by the prosecutor during trial were improper. Appellant does not clarify which statements he is referring to, or that these statements had an effect on the outcome of his trial. Nonetheless, this information was available through the trial court record and should have been challenged on direct appeal.

{¶ 15} Since appellant's claims are barred by res judicata, he is not entitled to an evidentiary hearing. *Wright* at ¶ 11. Moreover, the trial court's journal entries contained sufficient information to apprise him of the grounds for its judgments and to enable this court to properly determine his appeals, i.e., that his petitions were denied based on res judicata. Therefore, his argument that the trial court was required to issue findings of fact and conclusions of law fails. *State ex rel. Carrion v. Harris*, 40 Ohio St.3d 19 (1988); *State v. Lowe*, 10th Dist. No. 10AP-584, 2011-Ohio-3996, ¶ 17 ("[A] trial court's decision dismissing a postconviction petition does not need to be designated 'findings of fact and conclusions of law,' so long as the decision is sufficient to advise the petitioner and the appellate court of the trial court's reasoning and permit meaningful appellate review.").

{¶ 16} Thus, we find the trial court did not abuse its discretion in denying appellant's petitions for postconviction relief without conducting an evidentiary hearing.

¹ *State v. Muhumed*, 10th Dist. No. 11AP-1001, 2012-Ohio-6155, ¶ 66. See also *State v. Warden*, 33 Ohio App.3d 87, 91 (5th Dist.1986) (res judicata barred criminal defendant from raising in postconviction relief proceeding any error in the exclusion of evidence during trial, which should have been raised on direct appeal); *State v. Combs*, 100 Ohio App.3d 90, 107-08 (1st Dist.1994) (res judicata barred defendant from claiming in postconviction relief petition that trial court erred in excluding relevant evidence during his criminal trial, when this issue could have been raised on direct appeal from his criminal conviction).

We further find the trial court judgments denying the postconviction petitions provided sufficient reasoning and permitted meaningful review.

IV. CONCLUSION

{¶ 17} Accordingly, appellant's three assignments of error are overruled, and the judgments of the Franklin County Court of Common Pleas are affirmed.

Judgments affirmed.

TYACK and SADLER, JJ., concur.
