

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	CASE NO. CA2005-08-077
	:	
- vs -	:	<u>OPINION</u>
	:	6/19/2006
	:	
JEFFERY H. SIMS,	:	
	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2004-CR-000812

Donald W. White, Clermont County Prosecuting Attorney, David H. Hoffmann, 123 North Third Street, Batavia, Ohio 45103, for plaintiff-appellee

Jeffery H. Sims, #486-945, Lebanon Correctional Institution, P.O. Box 56, Lebanon, Ohio 45036, pro se

WALSH, P.J.

{¶1} Defendant-appellant, Jeffery Sims, appeals the decision of the Clermont County Court of Common Pleas, denying his petition for postconviction relief. We affirm the trial court's decision.

{¶2} On November 8, 2004, appellant pled guilty to counts of failure to comply with an order or signal of a police officer in violation of R.C. 2921.331(B); felonious assault in violation of R.C. 2903.11(A)(1); and vandalism in violation of R.C. 2909.05(B)(2). Appellant

was sentenced on December 28, 2004 to an aggregate prison term of 12 years and six months. Appellant did not appeal the convictions. On June 28, 2005, appellant filed a petition for postconviction relief. The trial court denied the petition without holding an evidentiary hearing, and appellant appeals, raising eight assignments of error.¹

{¶3} In his first five assignments of error, appellant contends that his Sixth Amendment right to a jury trial was violated when he was sentenced to a greater than minimum prison term. The crux of appellant's argument is that, in accordance with *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, a jury rather than the trial court should have decided his punishment. In his sixth assignment of error, appellant claims that his trial counsel was ineffective for failing to raise the alleged *Blakely* error at trial.

{¶4} The decision to grant or deny a petition for postconviction relief is committed to the discretion of the trial court. *State v. Kruse*, Warren App. Nos. CA2005-10-112, CA2005-10-113, 2006-Ohio-2510, ¶5, citing *State v. Watson* (1998), 126 Ohio App.3d 316, 324. Pursuant to R.C. 2953.21(C), "a trial court properly denies a defendant's petition for postconviction relief without holding an evidentiary hearing where the petition, the supporting affidavits, the documentary evidence, the files, and the records do not demonstrate that petitioner set forth sufficient operative facts to establish substantive grounds for relief." *State v. Calhoun*, 86 Ohio St.3d 279, 1999-Ohio-102, paragraph two of the syllabus.

{¶5} We recognize that the Supreme Court of Ohio, in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, found that the *Blakely* decision impacts Ohio's sentencing scheme, and held unconstitutional parts of the sentencing scheme under which appellant was sentenced. However, it is well-established that a defendant cannot raise an issue in a petition for postconviction relief if he could have raised the issue on direct appeal. *State v. Reynolds*, 79 Ohio St.3d 158, 1997-Ohio-304; *State v. Szefcyk*, 77 Ohio St.3d 93, 1996-Ohio-

1. Appellant has numbered his assignments of error one through six, eight, and nine, omitting seven.

337, syllabus. The doctrine of res judicata precludes a convicted defendant "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 appeal from that judgment." *Szefcyk* at 96. Nothing precluded appellant from directly appealing the constitutionality of his sentence. Consequently, appellant cannot now use this claim as a basis for a petition for postconviction relief. *Id.*

{¶6} Similarly, when a claim of ineffective assistance of counsel is based solely upon evidence in the record, as in the instant case, such a claim could have been raised upon direct appeal and is subsequently barred by res judicata in a postconviction relief proceeding. See *State v. Reynolds*, 79 Ohio St.3d 158, 161, 1997-Ohio-304 ("pursuant to res judicata, a defendant cannot raise an issue in a [petition] for post conviction relief if he or she could have raised the issue on direct appeal"); *State v. Smith* (1997), 125 Ohio App.3d 348; *State v. Lentz*, 70 Ohio St.3d 527, 1994-Ohio-532.

{¶7} The issues raised by appellant's petition for postconviction relief are barred by res judicata, and consequently, the trial court did not err by dismissing the petition. Appellant's first six assignments of error are overruled.

{¶8} In assignment of error number eight, appellant alleges that the trial court made insufficient findings of fact and conclusions of law when ruling on his petition for postconviction relief.

{¶9} R.C. 2953.21(G) requires the trial court, upon denying relief on the petition, to make and file findings of fact and conclusions of law setting forth its findings on each issue presented and a substantive basis for its disposition of each claim for relief advanced in the petition. See, also, *Calhoun*, at 291; *State v. Lester* (1975), 41 Ohio St.2d 51. The purpose of requiring findings of fact and conclusions of law is to apprise the petitioner of the basis for

the court's disposition and to facilitate meaningful appellate review. *State ex rel. Carrion v. Harris* (1988), 40 Ohio St.3d 19. A trial court "need not discuss every issue raised by appellant or engage in an elaborate and lengthy discussion in its findings of fact and conclusions of law. The findings need only be sufficiently comprehensive and pertinent to the issue to form a basis upon which the evidence supports the conclusion." *Calhoun*, at 291-292; see, also, *State v. Clemmons* (1989), 58 Ohio App.3d 45, 46.

{¶10} In the present case, the trial court issued a judgment entry addressing each of appellant's claims and explaining why each was without merit. Upon review, we conclude that the trial court's judgment entry includes adequate findings of fact and conclusions of law to satisfy the requirements of R.C. 2953.21(G), and find appellant's contention to be without merit. Assignment of error number eight is overruled.

{¶11} In his final assignment of error, appellant contends that the trial court's decision conflicts with the United States Supreme Court's *Blakely* decision, and, pursuant to App.R. 25(A), asks that this court certify the conflict.

{¶12} Appellant has a fundamental misunderstanding of the function and purpose of App.R. 25(A), and Section 3(B)(4), Article IV of the Ohio Constitution. Section 3(B)(4) provides Ohio Courts of Appeals with the authority to certify conflicts to the Ohio Supreme Court, and states:

{¶13} "Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by another court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination."

{¶14} The plain language of this section indicates that, for a conflict to warrant certification, the reasoning and judgment of two *courts of appeals* must be in conflict. *Id.*; see, also, *State v. Hankerson* (1989), 52 Ohio App.3d 73 ("[i]t is not enough that the reasoning

expressed in the opinions of the two courts of appeals be inconsistent; the judgment of the two courts of appeals must be in conflict"). This court simply has no authority to certify a conflict between a trial court's decision, and a decision of the United States Supreme Court. Appellant's ninth assignment of error is overruled, and the motion to certify a conflict is denied.

{¶15} Judgment affirmed.

BRESSLER and HENDRICKSON, JJ., concur.

Hendrickson, J., retired, of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 6(C), Article IV of the Ohio Constitution.

[Cite as *State v. Sims*, 2006-Ohio-3091.]