

[Cite as *State v. Speed*, 2018-Ohio-277.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105543

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

WILLIE SPEED

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-03-436669-ZA

BEFORE: Laster Mays, J., E.A. Gallagher, A.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: January 25, 2018

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ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Willie Speed (“Speed”) appeals the trial court’s decision to deny his motion for relief from judgment and asks this court to reverse the trial court’s decision. We affirm

{¶2} In 2003, Speed was convicted of rape, attempted rape, kidnapping, impersonating a police officer, and possession of criminal tools. Speed was also found guilty of the sexually violent predator specification and was sentenced to a prison term of nine years to life. Speed appealed to this court in 2004 in *State v. Speed*, 8th Dist. Cuyahoga No. 83746, 2004-Ohio-5211 (“*Speed I*”), and this court affirmed his convictions, but vacated the sentences for impersonating a police officer and remanded the matter for resentencing.

{¶3} The trial court resentenced Speed and corrected his sentence in accordance with the decision in *Speed I*. In 2005, Speed appealed this court’s decision to affirm his convictions in *Speed I* to the Supreme Court of Ohio. The court denied that appeal in *State v. Speed*, 105 Ohio St.3d 1452, 2005-Ohio-763, 823 N.E.2d 457 (“*Speed II*”). Speed then filed two postconviction petitions alleging ineffective assistance of counsel. This court, in *State v. Speed*, 8th Dist. Cuyahoga No. 85095, 2005-Ohio-1979 (“*Speed III*”), ruled that,

We lack jurisdiction to hear this appeal because the court failed to issue findings of fact and conclusions of law when it dismissed the petitions. R.C.

2953.21(C) states, “if the court dismisses the petition, it shall make and file findings of fact and conclusions of law with respect to such dismissal.” Likewise, R.C. 2953.21(G) states, “if the court does not find grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall enter judgment denying relief on the petition.” *In State v. Calhoun*, 86 Ohio St.3d 279, 291-292, 1999 Ohio 102, 714 N.E.2d 905, the supreme court stated that “the findings need only be sufficiently comprehensive and pertinent to the issue to form a basis upon which the evidence supports the conclusion.”

Speed III, at ¶ 2.

{¶4} It was remanded to the trial court that denied Speed’s petitions again. In *State v. Speed*, 8th Dist. Cuyahoga No. 85095, 2005-Ohio-4423 (“*Speed IV*”), this court found that the trial court should have held a hearing and was remanded to the trial court for further proceedings. The trial court held a hearing on Speed’s postconviction petitions. The trial court again denied the petitions. Speed filed an appeal with this court, which was dismissed for his failure to file a timely, conforming brief. Speed filed a notice of appeal in the Supreme of Ohio, which declined to accept jurisdiction and dismissed his appeal. *State v. Speed*, 149 Ohio St.3d 1418, 2017-Ohio-4038, 75 N.E.3d 236.

{¶5} On December 7, 2016, Speed filed a motion for relief from judgment under Civ.R. 60(B). The trial court denied Speed’s motion, and Speed filed this timely appeal arguing one assignment of error:

- I. The trial court erred when it denied the motion for relief from judgment.

I. Res Judicata

{¶6} “We review a trial court’s ruling on a Civ.R. 60(B) motion for relief from judgment for an abuse of discretion. *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 520 N.E.2d 564.” *Bohannon v. Gallagher Pipino, Inc.*, 8th Dist. Cuyahoga No. 92325, 2009-Ohio-3469, ¶ 7. “An abuse of discretion implies more than an error of law or judgment. Rather, abuse of discretion suggests that the trial court acted in an unreasonable, arbitrary, or unconscionable manner.” (Citations omitted.) *Dawson v. Blockbuster, Inc.*, 8th Dist. Cuyahoga No. 86451, 2006-Ohio-1240, ¶ 15.

{¶7} Speed’s claims are barred by res judicata.

Under the doctrine of res judicata, “a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *State v. Patrick*, 8th Dist. Cuyahoga No. 99418, 2013-Ohio-5020, ¶ 7, citing *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382, 1995 Ohio 331, 653 N.E.2d 226 (1995). In order to overcome the res judicata bar, the petitioner must show, through the use of extrinsic evidence, that he or she could not have appealed the original constitutional claim based on the information in the original trial record. *State v. Combs*, 100 Ohio App.3d 90, 652 N.E.2d 205 (1st Dist.1994). Said another way, issues properly raised in a petition for postconviction relief are only those that could not have been raised on direct appeal because the evidence supporting such issues is outside the record. *State v. Milanovich*, 42 Ohio St.2d 46, 50, 325 N.E.2d 540 (1975).

State v. Jackson, 8th Dist. Cuyahoga No. 104132, 2017-Ohio-2651, ¶ 53.

{¶8} Speed has not demonstrated that it was impossible for him to raise his issues on direct appeal. In fact, this court had already affirmed Speed’s convictions in *Speed I*.

Speed claim’s that he was improperly convicted of the sexually violent predator specification. However that conviction has already been affirmed by this court. “It is

well recognized that the doctrine of res judicata bars claims that were raised or could have been raised on direct appeal.” (Citations omitted.) *State v. Roberts*, 8th Dist. Cuyahoga No. 104474, 2017 Ohio App. LEXIS 5459, ¶ 5 (Dec. 14, 2017). Therefore, Speed’s sole assignment of error is overruled.

{¶9} Judgment is affirmed.

It is ordered that the appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANITA LASTER MAYS, JUDGE

EILEEN A. GALLAGHER, A.J., and
SEAN C. GALLAGHER, J., CONCUR