[Cite as *State v. Sutherland*, 2026-Ohio-4312.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
DARKE COUNTY

STATE OF OHIO	:	
	:	C.A. No. 2026-CA-7
Appellee	:	
	:	Trial Court Case No. 20CR00091
v.	:	
	:	(Criminal Appeal from Common Pleas
JEFFREY SUTHERLAND	:	Court)
	:	
Appellant	:	**FINAL JUDGMENT ENTRY & OPINION**

. . . . . .

Pursuant to the opinion of this court rendered on October 30, 2026, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



MARY K. HUFFMAN, JUDGE

LEWIS, P.J., and EPLEY, J., concur.

OPINION
DARKE C.A. No. 2026-CA-7

JEFFREY SUTHERLAND, Appellant, Pro Se
DEBORAH S. QUIGLEY, Attorney for Appellee

HUFFMAN, J.

{¶ 1} Jeffrey Sutherland appeals from the judgment entry of the Darke County Common Pleas Court overruling his request for summary judgment. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} In 2020, Sutherland was indicted on three counts of rape (child under 10) in violation of R.C. 2907.(A)(1)(b). At a jury trial, the trial court granted Sutherland's motion for judgment of acquittal on Count 3, and the jury found him guilty on Counts 1 and 2. This court affirmed Sutherland's conviction on Count 2. *State v. Sutherland,* 2022-Ohio-3079 (2d Dist.). We also determined that the State's evidence on Count 1 was not sufficient to sustain a conviction of rape, yet the evidence supported a conviction of GSI. *Id.* Sutherland filed petitions for postconviction relief alleging ineffective assistance of counsel and prosecutorial misconduct. We affirmed the trial court's denial of those petitions. *State v. Sutherland,* 2025-Ohio-488 (2d. Dist.). Sutherland also filed a motion for relief from judgment. The trial court overruled the motion on March 25, 2025, and no appeal was taken by Sutherland. In November 2025, Sutherland filed a motion for judicial release, which the trial court denied, finding that Sutherland was ineligible.

{¶ 3} Relevant to the pending appeal, on March 3, 2026, Sutherland filed a motion for summary judgment. While the arguments in his motion are difficult to discern, it appears to be generally focused on various matters related to the conduct of his trial. The motion argued that Sutherland's status as a graduate of a police academy and a former member of the

U.S. Army, as well as his security clearance, somehow afford additional review of his conviction. We have interpreted his motion for summary judgment to argue that he was not guilty of the offenses, to challenge the failure to test a rape kit and the credibility of the evidence at trial, and to argue that the evidence was not sufficient to support his conviction and that his conviction was against the manifest weight of the evidence. A review of Sutherland's motion before the trial court suggests that he requested dismissal of the charges for which he was found guilty and that he sought release from incarceration. The trial court denied his request for summary judgment, and Sutherland appealed.

{¶ 4} Similar to his motion in the trial court, the essence of Sutherland's argument on appeal is difficult to discern. We have interpreted his brief to raise an assignment of error that the trial court erred in denying his motion for summary judgment.

{¶ 5} Appellate courts review the denial of a motion for summary judgment de novo, relying on the standards set for in Civ. R. 56. As a preliminary matter, though, the denial of a motion for summary judgment is not a final appealable order. On that alone, this court may dismiss Sutherland's appeal. However, we also discuss the substantive basis for affirming the trial court's denial of his motion for summary judgment.

{¶ 6} Sutherland's reliance on Civ. R. 56, which governs the procedure for summary judgment, is wholly misplaced for multiple reasons. Generally speaking, the Rules of Civil Procedure are inapplicable in criminal proceedings. Crim.R. 57(B) permits the application of the Civil Rules in criminal proceedings only when no procedure is specifically prescribed by a criminal rule. *State v. Schlee,* 117 Ohio St.3d 153, 156 (2008), citing *State v. Lilliock,* 70 Ohio St. 2d 23, 25 (1982). Crim.R. 29(A), which permits a trial court to grant a motion for judgment of acquittal if the evidence is insufficient to sustain a conviction for an offense, was available to Sutherland during the original proceedings on his case to contest the sufficiency

of the evidence supporting his convictions. In fact, a review of the trial record makes clear that Sutherland moved for acquittal under Crim.R. 29(A) on all three indicted charges, although the court sustained the motion only as to Count 3. Because a remedy existed for Sutherland under the criminal rules, there was no legal basis to resort to applying the Rules of Civil Procedure.

{¶ 7} Additionally, Civ. R. 56 provides, in part:

> A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part of the claim, counterclaim, cross-claim, or declaratory judgment action.

It is axiomatic, then, that in order for a trial court to grant summary judgment, there must be some action, whether a claim, counterclaim, or cross-claim, pending before the court. A motion for summary judgment may be appropriate in relation to a petition for postconviction relief as such a claim is civil in nature. *State v. Foster,* 2006-Ohio-1969, ¶ 9 (2d Dist.). But summary judgment, standing alone and not associated with a claim, counterclaim, or cross-claim, is not an authorized remedy under the Rules of Civil Procedure. There was no claim, counterclaim, or cross-claim pending before the trial court when Sutherland filed his motion for summary judgment. A review of the record reveals that at the time Sutherland filed his motion for summary judgment, there was no petition for postconviction relief or other cognizable claim pending in the trial court. Because the trial court had already rendered final judgment and there were no claims pending before the court, summary judgment under Civ.R. 56 was not authorized.

{¶ 8} Finally, even if Civ.R. 56 were applicable to Sutherland's claims, he failed to support his motion with competent evidence required to entitle a litigant to summary

judgment. "Civ. R. 56(C) provides that summary judgment may be granted when the moving party demonstrates that (1) there are no genuine issues of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made." *Aubrey-Dean v. CareSource*, 2024-Ohio-3209, ¶ 4 (2d Dist.), citing *Taylor v. Meijer, Inc.,* 2009-Ohio-1966, ¶ 11 (2d Dist.). The moving party has the initial burden of demonstrating that there is no genuine issue of material fact; one means of satisfying this burden is by utilizing affidavits or depositions. *Johnson v. Wal-Mart Stones E., L.P.*, 2014-Ohio-2998, ¶ 15 (2d Dist.). If Civ. R. 56 were applicable, because Sutherland failed to support his motion with the type of evidence contemplated by Rule 56, he failed to meet his burden with respect to his motion for summary judgment, and the trial court did not err in overruling his motion.

{¶ 9} Finally, the claims argued in his motion for summary judgment and on appeal are barred by res judicata. Sutherland continues to argue that he is not guilty of the offenses for which he was convicted. Under the doctrine of res judicata, a final conviction bars a defendant from raising and litigating in any proceeding, except an appeal from that judgment, any defense or claimed lack of due process that was raised or could have been raised by the defendant at trial or on direct appeal from the conviction. *State v. Szefcyk,* 77 Ohio St.3d 93 (1996). Sutherland fully litigated or could have litigated on direct appeal all matters raised in his motion for summary judgment. Since this court affirmed Sutherland's conviction for rape (under 10) in Count 2 and ordered that the conviction in Count 1 be reduced to GSI (F3) and since he raised no issues that could not have been argued on direct appeal, Sutherland's claims were barred by res judicata. His implied assignment of error is overruled.

{¶ 10} For the reasons stated above, the trial court did not err in overruling Sutherland's motion for summary judgment, and the judgment of the trial court is affirmed.

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LEWIS, P.J., and EPLEY, J., concur.