

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

ULYSSES L. FEAGIN

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. John W. Wise, J.

Hon. Andrew J. King, J.

Case No. 2023 CA 0005

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common  
Pleas, Case No. 2020 CR 0467

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 14, 2023

APPEARANCES:

For Plaintiff-Appellee

JODIE SCHUMACHER  
PROSECUTING ATTORNEY  
ASHLEY HAWKING  
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For Defendant-Appellant

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Wise, J.

{¶1} Appellant Ulysses L. Feagin appeals the January 13, 2023, decision of the Richland County Common Pleas Court denying his Petition to Vacate or Set Aside Judgment of Conviction or Sentence.

{¶2} Appellee is the state of Ohio.

{¶3} This case is before this Court on the accelerated calendar which is governed by App.R. 11.1. Subsection (E), Determination and Judgment on Appeal, provides in pertinent part: “The appeal will be determined as provided by App.R. 11.1. It shall be sufficient compliance with App.R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.”

{¶4} One of the most important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983).

{¶5} This appeal shall be considered in accordance with the aforementioned rules.

#### STATEMENT OF THE FACTS AND CASE

{¶6} For purposes of this Opinion, the relevant facts and procedural history are as follows:

{¶7} On September 3, 2020, the Richland County Grand Jury returned an indictment charging Appellant with 22 counts as follows: Count 1: Trafficking in Heroin with two firearm specifications; Count 2: Possession of Heroin with two firearm

specifications; Count 3: Trafficking in cocaine with two firearm specifications; Count 4: Possession of Cocaine with two firearm specifications; Count 5: Aggravated trafficking in drugs with two firearm specifications; Count 6: Aggravated trafficking in drugs with two firearm specifications; Count 7: Aggravated possession of drugs with two firearm specifications; Count 8: Aggravated possession of drugs with two firearm specifications; Count 9: Trafficking in drugs with two firearm specifications; Count 10: Trafficking in drugs with two firearm specifications; Count 11: Trafficking in drugs with two firearm specifications; Count 12: Trafficking in drugs with two firearm specifications; Count 13: Possession of drugs with two firearm specifications; Count 14: Possession of drugs with two firearm specifications; Count 15: Possession of drugs with two firearm specifications; Count 16: Possession of drugs with two firearm specifications; Count 17: Having weapons while under disability; Count 18: Having weapons while under disability; Count 19: Improperly handling firearms in a motor vehicle; Count 20: Improperly handling firearms in a motor vehicle; Count 21: Carrying a concealed weapon; Count 22: Carrying a concealed weapon.

**{¶8}** Counts 1 through 16 each carried two one-year firearm specifications pursuant to R.C. §2941.141(A) and two specifications for forfeiture of a gun in a drug case pursuant to R.C. §2941.1417(A). Counts 17 through 22 each carried two specifications for forfeiture of a weapon pursuant to R.C. §2941.1417(A).

**{¶9}** Appellant pled not guilty to the charges, and a jury trial was set for December 1, 2020. Although represented by counsel, Appellant filed numerous pro se motions, including motions to remove counsel and to disqualify the judge assigned to the case. Counsel for Appellant also filed a motion to determine Appellant's competency.

{¶10} A jury trial was commenced on September 20, 2021, at the conclusion of which Appellant was found guilty as charged.

{¶11} Appellant was subsequently sentenced to an aggregate prison term of 8 to 12 years and an additional 2 years for the firearm specifications.

{¶12} Many of the counts of the indictment merged, including the following: Count 2 merged with Count 1; Count 4 merged with Count 3; Counts 6, 7, and 8 merged with Count 5; Count 13 merged with Count 9; Count 14 merged with Count 10; Count 15 merged with Count 11; Count 16 merged with Count 12; Count 20 merged with Count 19, and Count 22 merged with Count 21; Counts 17 and 18 did not merge.

{¶13} On December 13, 2021, Appellant filed a direct appeal of his conviction wherein he raised five assignments of error.

{¶14} This Court affirmed the Judgment of the trial court on October 12, 2022. See *State v. Ulysses L. Feagin*, 5<sup>th</sup> Dist. Richland App. No. 2021 CA 0084, 2022-Ohio-3641.

{¶15} On October 24, 2022, Appellant filed a motion for reconsideration, which was denied by this Court on November 7, 2022.

{¶16} On November 30, 2022, Appellant filed a Notice of Appeal to the Supreme Court in Case Number 2022-1439.

{¶17} On January 19, 2023, Appellant filed a delayed application for reopening pursuant to App.R 26(B), which this Court denied on January 31, 2023.

{¶18} On February 23, 2023, the Supreme Court of Ohio declined jurisdiction.

{¶19} On March 3, 2023, Appellant filed a notice of appeal with the Supreme Court of Ohio, appealing this Court's judgment entry denying Appellant's application for

reopening pursuant to App. R. 26(B). The Supreme Court of Ohio declined jurisdiction on May 23, 2023.

{¶20} On December 1, 2022, Appellant filed a Petition to Vacate or Set Aside Judgment of Conviction or Sentence.

{¶21} By Judgment Entry filed January 13, 2023, the trial court denied Appellant's Petition to Vacate or Set Aside Judgment of Conviction or Sentence.

{¶22} Appellant now appeals, raising the following errors for review:

#### ASSIGNMENTS OF ERROR

{¶23} "I. WHETHER THE TRIAL COURT ABUSED HIS [SIC] DISCRETION WHEN HE [SIC] INTENTIONALLY MISCONSTRUED APPELLANT'S CLAIM AND ARGUMENT.

{¶24} "II. WHETHER APPELLANT WAS DENIED HIS FOURTEENTH AMENDMENT DUE PROCESS PROTECTION TO A FAIR TRIAL DUE TO PROSECUTORIAL MISCONDUCT, WHERE THE PROSECUTOR UNLAWFULLY DISMISSED THE TRAFFIC CHARGES.

{¶25} "III. WHETHER APPELLANT WAS DENIED HIS FOURTEENTH AMENMENT [SIC] DUE PROCESS RIGHT TO A FAIR TRIAL DUE TO PROSECUTOR MISCONDUCT WHERE HE FAILED TO PROVIDE DISCOVERY OF THE RECORDS FROM THE TRAFFIC CITATION, OR THE MOTION TO DISMISS THE TRAFFIC CHARGES.

{¶26} "IV. WHETHER THE MUNICIPAL JUDGE LACK OF [SIC] SUBJECT MATTER JURISDICTION TO TRANSFER THE MUNICIPAL TRAFFIC CASE TO THE COMMON PLEAS COURT.

**{¶27}** “V. WHETHER THE TRIAL COURT ABUSED HER [SIC] DISCRETION AND ERRED AS A MATTER OF LAW IN HER [SIC] FINDINGS OF FACT THAT THE PROSECTOR [SIC] CHOSE NOT TO PROSECUTE THE TRAFFIC CHARGES, WHERE THERE IS NO RECORD JOURNAL ENTRY OF DISMISSAL OF THOSE CHARGES.

**{¶28}** “VI. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION [SIC] AND DENIED THE APPELLANT A 14 [SIC] AMENDMENT RIGHT TO A FAIR AND ADEQUATE HEARING WHERE IT DETERMINED THAT THE OFFICER HAD PROBABLE CAUSE TO CONDUCT AN INITIAL TERRY STOP WITHOUT PROVIDING THE APPELLANT WITH A SUPPRESSION HEARING TO CHALLENGE THE TERRY STOP.

**{¶29}** “VII. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW IN ITS FINDINGS THAT THE SATE [SIC] CHOSE IN ITS DISCRETION NOT TO CHARGE THOSE MISDEMEANOR OFFENSES WITH THE FELONY WHERE THOSE FINDINGS ARE NOT SUPPORTED BY THE RECORD.”

**I., VI.**

**{¶30}** In his first and sixth assignments of error Appellant argues that his trial counsel was ineffective for failing to file a motion to suppress evidence. We disagree.

**{¶31}** Appellant has filed a post-conviction Petition to Vacate or Set Aside Judgment of Conviction or Sentence pursuant to R.C. § 2953.21. Where a criminal defendant, subsequent to direct appeal, files a motion seeking to vacate or correct his sentence on the basis that his constitutional rights were violated, such a motion is a petition for post-conviction relief under R.C. § 2953.21. *State v. Reynolds*, 79 Ohio St.3d 158, 160, 679 N.E.2d 1131, 1997-Ohio-304.

{¶32} R.C. § 2953.21 provides a petition for post-conviction relief must be filed no later than 365 days after the date on which the trial transcript is filed in the Court of Appeals in the direct appeal, or if no appeal is taken, no later than 365 days after the expiration of the time for filing the appeal.

{¶33} Upon review, we find that Appellant's petition was timely filed.

{¶34} The doctrine of *res judicata* is applicable to post-conviction relief proceedings. *State v. Nichols*, 11 Ohio St.3d 40, 463 N.E.2d 375 (1984), paragraph two of the syllabus. (Citation omitted). Moreover, *res judicata* has been utilized to justify dismissal of post-conviction relief proceedings where the issue in question was never raised on direct appeal from the original judgment and sentence. *Id.* at \*42. (Citation omitted).

{¶35} “Under the doctrine of *res judicata*, a final judgment of conviction bars the defendant from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that the defendant raised or could have raised at the trial which resulted in that judgment of conviction or on appeal from that judgment.” *State v. Snyder*, 5th Dist. Tuscarawas No. 2015AP070043, 2016–Ohio–832, ¶ 26 quoting *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967). Further, “[i]t is well-settled that, ‘pursuant to *res judicata*, a defendant cannot raise an issue in a [petition] for postconviction relief if he or she could have raised the issue on direct appeal.’ ” *State v. Elmore*, 5th Dist. Licking No. 2005–CA–32, 2005–Ohio–5940, ¶ 21 quoting *State v. Reynolds*, 79 Ohio St.3d 158, 161, 679 N.E.2d 1131 (1997).

{¶36} Upon review, we find that the issues raised by Appellant in his motion to vacate and in the instant appeal are issues which were cognizable on direct appeal from

his judgment of conviction and sentence, and Appellant's collateral attack on the judgment on these grounds is barred by *res judicata*. *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph nine of the syllabus.

{¶37} In his motion, Appellant raised two arguments both based on ineffective assistance of trial counsel: (1) his trial counsel was ineffective for failing to file a motion to suppress the vehicle stop; and, (2) his trial counsel was ineffective for failing to find and present evidence that the police officers planted evidence to frame him.

{¶38} Upon review, this Court finds that Appellant's arguments could have been raised in his direct appeal and are thus barred by *res judicata*. Appellant has presented no new evidence to support his motion.

{¶39} Because Appellant could have, but did not, raise his claimed sentencing error on direct appeal, the error is now barred by the doctrine of *res judicata*.

{¶40} Appellant's first and sixth assignments of error are overruled.

## II., III.

{¶41} In his second and third assignments of error, Appellant argues that prosecutorial misconduct at trial denied him the right to due process and a fair trial. We disagree.

{¶42} Initially, we note that these arguments were not contained in Appellant's Petition to Vacate or Set Aside Judgment of Conviction or Sentence.

{¶43} Further, for the same reasons as set forth above, Appellant's arguments could have been raised in his direct appeal and are thus barred by the doctrine of *res judicata*.

{¶44} Appellant's second and third assignments of error are overruled.



**IV., V. and VII.**

{¶45} In his fourth, fifth and seventh assignments of error, Appellant appears to argue that it was error for the state of Ohio to not charge certain misdemeanor offenses with the felony offenses, and that the municipal court lacked jurisdiction to transfer his case to the common pleas court. We disagree.

{¶46} Again, these arguments were not contained in Appellant's Petition to Vacate or Set Aside Judgment of Conviction or Sentence.

{¶47} Appellant's arguments also could have been raised in his direct appeal. Such claims are therefore barred by the doctrine of *res judicata*.

{¶48} The judgment of the Court of Common Pleas Richland County, Ohio, is affirmed.

By: Wise, J.

Gwin, P. J., and

King, J., concur.

JWW/kw 0809