

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO,	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
FRANK LEWIS,	:	Case No. 23CA000011
	:	
Defendant - Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Appeal from the Knox County Court of Common Pleas, Case No. 22CR01-0020
--------------------------	---

JUDGMENT:	Affirmed
-----------	----------

DATE OF JUDGMENT:	February 20, 2024
-------------------	-------------------

APPEARANCES:

For Plaintiff-Appellee

CHIP MCCONVILLE
Knox County Prosecutor
117 E. High Street #234
Mt. Vernon, Ohio 43050

For Defendant-Appellant

FRANK LEWIS, Pro Se
P.O. Box 69
London, Ohio 43140

Baldwin, J.

{¶1} The appellant, Frank Lewis, appeals the July 31, 2023, Judgment Entry denying his Motion for “Counsel Only” Material and Petition for Post-Conviction Relief. Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND THE CASE

{¶2} On January 31, 2022, the Knox County Grand Jury indicted the appellant on two counts of Aggravated Trafficking in Drugs in violation of R.C. §2925(A)(1).

{¶3} On July 1, 2022, the appellant entered a plea of guilty to one count of Aggravated Trafficking in Drugs after the second count had been dismissed. No direct appeal was filed.

{¶4} On May 22, 2023, the appellant filed a Motion for Counsel Only Material,

{¶5} On June 14, 2023, the appellant filed a Petition for Post-Conviction Relief. In the motion, the appellant argues he should have been allowed to see “counsel only” material.

{¶6} On July 31, 2023, the trial court denied the appellant’s Motion for Counsel Only Material and Petition for Post-Conviction Relief.

{¶7} The appellant timely filed a notice of appeal and raised the following two assignments of error:

{¶8} “I. THE TRIAL COURT FAILED TO PERFORM AN IN CAMERA INSEPCION OF THE COUNSEL ONLY MATERIALS. THIS IS A VIOLATION OF THE APPELLANTS [sic] RIGHT TO DUE PROCESS FOUND IN THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.”

{¶9} “II. THE APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL VIOLATING HIS RIGHT TO DUE PROCESS AND THE EFFECTIVE ASSISTANCE OF COUNSEL FOUND IN THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.”

I., II.

{¶10} In the appellant’s first and second Assignment of Error, the appellant argues that the trial court abused its discretion in failing to perform an in-camera inspection of “counsel only” materials, and the trial court erred by not granting the appellant’s petition for post-conviction relief. We disagree.

ANALYSIS

{¶11} The doctrine of *res judicata* has been utilized to justify the dismissal of post-conviction proceedings where the issue in question was never raised on direct appeal from the original judgment and sentence. *State v. Nichols*, 11 Ohio St.3d 40, 42, 463 N.E.2d 375 (1984). We find these issues are barred by the doctrine of *res judicata*.

{¶12} “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 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).

{¶13} Upon review, we find that the issues raised by the appellant in his Motion for “Counsel Only” Material and his Petition for Post-Conviction Relief were cognizable at the time he entered a plea of guilty and at the time he could have filed a direct appeal from his conviction. The appellant’s collateral attack on the judgment on these grounds is barred by *res judicata*. *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph nine of the syllabus (1967). The appellant has presented no newly discovered evidence to support his motion.

{¶14} Since the appellant could have, but did not, raise these claims on direct appeal, these alleged errors are barred by the doctrine of *res judicata*.

{¶15} Accordingly, the appellant’s first and second Assignments of Error are overruled.

CONCLUSION

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

By: Baldwin, J.

Gwin, P.J. and

Wise, John, J. concur.