[Cite as *State v. Higgins*, 2026-Ohio-3810.]

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
PERRY COUNTY, OHIO

STATE OF OHIO, Plaintiff - Appellee -vs- ARTHUR R. HIGGINS, II, Defendant - Appellant	Case No. 26-CA-00005 Opinion And Judgment Entry Appeal from the Perry County Court of Common Pleas, Case No. 23-CR-0018 Judgment: Affirmed in part; Dismissed in part Date of Judgment Entry: September 24, 2026

BEFORE: William B. Hoffman; Craig R. Baldwin; David M. Gormley, Judges

APPEARANCES: D. ANDREW WILSON, Ohio Attorney General, DREW WOOD, Special Prosecuting Attorney, Assistant Attorney General, for Plaintiff-Appellee; ARTHUR R. HIGGINS, II, Pro se, Inmate #A827186, for Defendant-Appellant.

Baldwin, J.

{¶1} The appellant, Arthur R. Higgins, II, appeals the trial court's March 4, 2026, Entry denying his post-conviction "Motion For Leave To File A Delayed Discovery Pursuant to Crim.R. 16(A), Brady v. Maryland, Pro Se." Appellee is the State of Ohio.

STATEMENT OF FACTS AND THE CASE

{¶2} On June 29, 2023, the appellant was indicted on the following charges:

- Count One - Rape: sexual conduct with a person ("CV1") who is less than thirteen years of age in violation of R.C. 2907.02(A)(1)(b), a felony of the first degree;

- Count Two - Rape: sexual conduct with a person ("CV1") who is less than thirteen years of age in violation of R.C. 2907.02(A)(1)(b), a felony of the first degree;
- Count Three - Gross Sexual Imposition: sexual contact with a person ("CV1") who is less than thirteen years of age in violation of R.C. 2907.05(A)(4), a felony of the third degree;
- Count Four - Gross Sexual Imposition: sexual contact with a person ("CV1") who is less than thirteen years of age in violation of R.C. 2907.05(A)(4), a felony of the third degree;
- Count Five - Gross Sexual Imposition: sexual contact with a person ("CV1") who is less than thirteen years of age in violation of R.C. 2907.05(A)(4), a felony of the third degree;
- Count Six - Rape: sexual conduct with a person ("CV2") who is less than thirteen years of age in violation of R.C. 2907.02(A)(1)(b), a felony of the first degree;
- Count Seven - Gross Sexual Imposition: sexual contact with a person ("CV2") who is less than thirteen years of age in violation of R.C. 2907.05(A)(4), a felony of the third degree;
- Count Eight - Gross Sexual Imposition: sexual contact with a person ("CV2") who is less than thirteen years of age in violation of R.C. 2907.05(A)(4), a felony of the third degree;

- Count Nine - Gross Sexual Imposition: sexual contact with a person ("CV3") who is less than thirteen years of age in violation of R.C. 2907.05(A)(4), a felony of the third degree;
- Count Ten - Gross Sexual Imposition: sexual contact with a person ("CV3") who is less than thirteen years of age in violation of R.C. 2907.05(A)(4), a felony of the third degree; and,
- Count Eleven - Gross Sexual Imposition: sexual contact with a person ("CV3") who is less than thirteen years of age in violation of R.C. 2907.05(A)(4), a felony of the third degree.

The appellant pleaded not guilty, and was appointed counsel. The case proceeded, discovery was had, and a jury trial was scheduled. The appellee designated some of the documents relating to the minor victims as "counsel only" during the discovery process. The record reflects no challenge to this designation.

{¶3} The appellee dismissed counts nine, ten, and eleven, the matter proceeded to trial, and the appellant was convicted on the remaining counts, which included three counts of rape and five counts of gross sexual imposition involving victims CV1 and CV2, both minor children who were under the age of thirteen at the time of the offenses. The appellant was sentenced to a mandatory life sentence without the possibility of parole on the two counts of rape of CV1; a mandatory life sentence without the possibility of parole on the one count of rape of CV2, to be served consecutively to the sentence for counts one and two; and, forty-eight months in prison for each of the five counts of gross sexual imposition. The appellant appealed his conviction and sentence in *State v. Higgins,* 2025-Ohio-2122 (5th Dist.), *appeal dismissed*, 2025-Ohio-5477. No issues regarding the "counsel only" documents were raised on

direct appeal. This Court vacated the appellant's convictions on the two counts of gross sexual imposition set forth in counts four and five, and affirmed the remainder of the trial court's decision.

{¶4} On May 6, 2025, the appellant, through appointed counsel, filed a Petition to Vacate and Set Aside Conviction and Sentence Pursuant to R.C. 2953.21, citing, inter alia, ineffective assistance of counsel. The issues were briefed by the parties. The trial court scheduled an evidentiary hearing on the Petition on October 7, 2025, during which the court heard evidence, including testimony from the appellant, private investigator Jeff Edwards, private investigator Teresa Edwards, and the appellant's trial counsel Lisa Tome. Both parties submitted Proposed Findings of Fact and Conclusions of Law. The trial court issued a Judgment Entry on February 5, 2026, in which it denied the appellant's Petition. On March 3, 2026, the appellant filed an appeal, through appointed counsel, from the trial court's February 5, 2026, Judgment Entry. Said appeal, which can be found at Case No. 26-CA-00004 of the Fifth District Court of Appeals for Perry County, Ohio, is currently proceeding simultaneously with the within pro se appeal.

{¶5} On February 20, 2026, the appellant filed a "Motion For Leave To File A Delayed Discovery Pursuant To Crim.R. 16(A) Brady v. Maryland, Pro Se." The appellant argued that he was entitled to personally view discovery documents that had been designated "counsel only," and that the appellee had "violated Crim.R. 16(D) by failing to 'certify to the court that the prosecuting attorney is not disclosing material or portions of material otherwise subject to disclosure under his rule….' " The appellant argued further that "[a]lthough CV1 and CV2 were under the age of 13 at the time of the discovery request, this fact alone was not justification to designate the entire discover [sic] package 'counsel only.' " The appellant did

not argue in his Motion For Leave that his trial counsel had been prohibited from viewing the documents designated "counsel only" or from discussing the contents of said documents with the appellant in preparation of his defense. Further, the appellant made no arguments in his Motion For Leave regarding any alleged ineffective assistance of trial counsel. The appellant appeared to make an argument pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), in a footnote following his signature line regarding an alleged suppression of evidence, asserting that the designation of certain materials as "counsel only" was tantamount to the suppression of said evidence and thus violative of his due process rights. The appellee filed a Response to the appellant's Motion For Leave on February 26, 2026. On March 4, 2026, the trial court issued an Entry denying the appellant's Motion. On March 6, 2026, the appellant filed a Notice of Appeal to which he attached a copy of the March 4, 2026, Entry, and has set forth the following two assignments of error:

{¶6} "I. WHETHER THE TRIAL COURT ABUSED IT'S [SIC] DISCRETION BY NOT SUA SPONTE ORDERING A CRIM. RULE 16(F) HEARING AFTER THE PROSECUTOR DESIGNATED ALL DISCOVERABLE EVIDENCE "COUNSEL ONLY" WITHOUT CERTIFYING TO THE COURT HIS INTENTIONS OR REASONS FOR DESIGNATING SUCH EVIDENCE AS "COUNSEL ONLY," THUS VIOLATING APPELLANT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS AND FAIR TRIAL AND CRIM. R. 16(D) (1-5), AND CRIM. R. 16(F)."

{¶7} "II. WHETHER TRIAL COUNSEL LISA TOME RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE 6TH AMENDMENT TO THE U.S. CONSTITUTION, AND ART. 1, SECTION 10 OF OHIO'S CONSTITUTION WHEN SAID COUNSEL FAILED TO FILE THE

APPROPRIATE MOTION WITHIN A TIMELY FASHION IN ORDER TO CHALLENGE THE PROSECUTOR'S "COUNSEL ONLY" DESIGNATION FOR IN CAMERA INSPECTION OF DISCOVERABLE MATERIAL FOR ABUSE OF DISCRETION?"

ASSIGNMENT OF ERROR NO. I

{¶8} The appellant submits in his first assignment of error that the trial court erred when it failed to sua sponte order a Crim.R. 16(F) hearing on the issue of discovery and the prosecution's designation of some evidence as "counsel only". We disagree.

Standard Of Review

{¶9} The standard of review of motions for leave, as well as evidentiary and discovery matters, is abuse of discretion. *State v. Kopchak*, 2018-Ohio-1136, ¶15 (5th Dist.). To find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary, or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

Analysis

{¶10} Crim.R. 16 addresses discovery and inspection in criminal matters, and states in pertinent part:

> **(A) Purpose, scope, and reciprocity**. This rule is to provide all parties in a criminal case with the information necessary for a full and fair adjudication of the facts, to protect the integrity of the justice system and the rights of defendants, and to protect the well-being of witnesses, victims, and society at large. All duties and remedies are subject to a standard of due diligence, apply to the defense and the prosecution equally, and are intended to

be reciprocal. Once discovery is initiated by demand of the defendant, all parties have a continuing duty to supplement their disclosures.

(B) Discovery: right to copy or photograph. Upon receipt of a written demand for discovery by the defendant, and except as provided in division (C), (D), (E), (F), or (J) of this rule, the prosecuting attorney shall provide copies or photographs, or permit counsel for the defendant to copy or photograph, the following items related to the particular case indictment, information, or complaint, and which are material to the preparation of a defense, or are intended for use by the prosecuting attorney as evidence at the trial, or were obtained from or belong to the defendant, within the possession of, or reasonably available to the state, subject to the provisions of this rule:

(1) Any written or recorded statement by the defendant or a co-defendant, including police summaries of such statements, and including grand jury testimony by either the defendant or co-defendant;

(2) Criminal records of the defendant, a co-defendant, and the record of prior convictions that could be admissible under Rule 609 of the Ohio Rules of Evidence of a witness in the state's case-in-chief, or that it reasonably anticipates calling as a witness in rebuttal;

(3) Subject to divisions (D)(4) and (E) of this rule, all laboratory or hospital reports, books, papers, documents, photographs, tangible objects, buildings, or places;

(4) Subject to division (D)(4) and (E) of this rule, results of physical or mental examinations, experiments or scientific tests;

(5) Any evidence favorable to the defendant and material to guilt or punishment;

(6) All reports from peace officers, the Ohio State Highway Patrol, and federal law enforcement agents, provided however, that a document prepared by a person other than the witness testifying will not be considered to be the witness's prior statement for purposes of the cross examination of that particular witness under the Rules of Evidence unless explicitly adopted by the witness;

(7) Any written or recorded statement by a witness in the state's case-in-chief, or that it reasonably anticipates calling as a witness in rebuttal.

(C) Prosecuting attorney's designation of "counsel only" materials. The prosecuting attorney may designate any material subject to disclosure under this rule as "counsel only" by stamping a prominent notice on each page or thing so designated. "Counsel only" material also includes materials ordered disclosed under division (F) of this rule. Except as otherwise provided, "counsel only" material may not be shown to the defendant or any other person, but may be disclosed only to defense counsel, or the agents or employees of defense counsel, and may not otherwise be reproduced, copied or disseminated in any way. Defense counsel may orally communicate the content of the "counsel only" material to the defendant.

(D) Prosecuting attorney's certification of nondisclosure. If the prosecuting attorney does not disclose materials or portions of materials under this rule, the prosecuting attorney shall certify to the court that the prosecuting

attorney is not disclosing material or portions of material otherwise subject to disclosure under this rule for one or more of the following reasons:

(1) The prosecuting attorney has reasonable, articulable grounds to believe that disclosure will compromise the safety of a witness, victim, or third party, or subject them to intimidation or coercion;

(2) The prosecuting attorney has reasonable, articulable grounds to believe that disclosure will subject a witness, victim, or third party to a substantial risk of serious economic harm;

(3) Disclosure will compromise an ongoing criminal investigation or a confidential law enforcement technique or investigation regardless of whether that investigation involves the pending case or the defendant;

(4) The statement is of a child victim of sexually oriented offense under the age of thirteen;

(5) The interests of justice require non-disclosure.

(6) Reasonable, articulable grounds may include, but are not limited to, the nature of the case, the specific course of conduct of one or more parties, threats or prior instances of witness tampering or intimidation, whether or not those instances resulted in criminal charges, whether the defendant is pro se, and any other relevant information.

(7) The prosecuting attorney's certification shall identify the nondisclosed material.

(E) Right of inspection in cases of sexual assault.

(1) In cases of sexual assault, defense counsel, or the agents or employees of defense counsel, shall have the right to inspect photographs, results of physical or mental examinations, or hospital reports, related to the indictment, information, or complaint as described in section (B)(3) or (B)(4) of this rule. Hospital records not related to the information, indictment, or complaint are not subject to inspection or disclosure. Upon motion by defendant, copies of the photographs, results of physical or mental examinations, or hospital reports, shall be provided to defendant's expert under seal and under protection from unauthorized dissemination pursuant to protective order.

(2) In cases involving a victim of a sexually oriented offense less than thirteen years of age, the court, for good cause shown, may order the child's statement be provided, under seal and pursuant to protective order from unauthorized dissemination, to defense counsel and the defendant's expert. Notwithstanding any provision to the contrary, counsel for the defendant shall be permitted to discuss the content of the statement with the expert.

(F) Review of prosecuting attorney's certification of non-disclosure. Upon motion of the defendant, the trial court shall review the prosecuting attorney's decision of nondisclosure or designation of "counsel only" material for abuse of discretion during an *in camera* hearing conducted seven days prior to trial, with counsel participating.

(1) Upon a finding of an abuse of discretion by the prosecuting attorney, the trial court may order disclosure, grant a continuance, or other appropriate relief.

(2) Upon a finding by the trial court of an abuse of discretion by the prosecuting attorney, the prosecuting attorney may file an interlocutory appeal pursuant to division (K) of Rule 12 of the Rules of Criminal Procedure.

(3) Unless, for good cause shown, the court orders otherwise, any material disclosed by court order under this section shall be deemed to be "counsel only" material, whether or not it is marked as such.

(4) Notwithstanding the provisions of (E)(2), in the case of a statement by a victim of a sexually oriented offense less than thirteen years of age, where the trial court finds no abuse of discretion, and the prosecuting attorney has not certified for nondisclosure under (D)(1) or (D)(2) of this rule, or has filed for nondisclosure under (D)(1) or (D)(2) of this rule and the court has found an abuse of discretion in doing so, the prosecuting attorney shall permit defense counsel, or the agents or employees of defense counsel to inspect the statement at that time.

(5) If the court finds no abuse of discretion by the prosecuting attorney, a copy of any discoverable material that was not disclosed before trial shall be provided to the defendant no later than commencement of trial. If the court continues the trial after the disclosure, the testimony of any witness shall be perpetuated on motion of the state subject to further cross-examination for good cause shown.

* * *

{¶11} Prior to the appellant's June 2023, trial the appellee designated certain materials pertaining to the minor victims as "counsel only" materials. While the materials were not accessible to the appellant for his personal review, they were made available to his counsel in anticipation of, and in preparation for, trial. No objections to the "counsel only" designation were made at that time. Nearly two years passed before the appellant filed his "Motion For Leave To File Delayed Discovery," during which this Court affirmed the appellant's conviction and sentence on three counts of rape and three counts of gross sexual imposition of two minor victims under the age of thirteen, and the Ohio Supreme Court dismissed his discretionary appeal. The appellant did not raise the issue of whether the trial court should have conducted a hearing sua sponte regarding the documents designated as "counsel only" at the time of his June 2023 trial, nor was the issue raised during the appellant's direct appeal from his convictions and sentence.

{¶12} Under the doctrine of res judicata, a final judgment bars a party from reasserting claims that were raised or that could have been raised at trial or in an appeal from that judgment. See, *M.S. v. Barnes (In re State)*, 2026-Ohio-2750, ¶ 13, citing *State v. Perry*, 10 Ohio St.2d 175, 180 (1967) and *AJZ's Hauling, L.L.C. v. Trunorth Warranty Programs of N. Am.*, 2023-Ohio-3097, ¶ 15. The appellant's alleged error regarding the nature and discoverability of the discovery documents designated as "counsel only" could have been raised at trial or in his direct appeal. It was not. As a result, the argument is now barred by the doctrine of res judicata. The trial court did not act unreasonably, arbitrarily, or unconscionably when it denied the appellant's Motion For Leave, and the appellant's first assignment of error is without merit.

ASSIGNMENT OF ERROR NO. II

{¶13} The arguments set forth in the appellant's second assignment of error do not speak to any issues addressed in the trial court's March 4, 2026, Entry denying his Motion For Leave, but rather, speak to why the appellant believes his trial counsel was ineffective.

{¶14} App.R. 3 addresses the procedure regarding how appeals of right are taken, and states in pertinent part:

> **(D) Contents of the notice of appeal or cross-appeal.** The notice of appeal or cross-appeal must (1) specify the party or parties taking the appeal by naming each one in the body of the notice or by using terms such as "all plaintiffs," "the defendants," "plaintiffs A, C, and D" or "all defendants except ___;" (2) designate the judgment--or the order or the part of it--from which the appeal is taken; and (3) name the court to which the appeal is taken. The title of the case will stay the same as in the trial court, with the designation of the appellant added, as appropriate. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

The appellant designated the trial court's March 4, 2026, Judgment Entry denying his Motion For Leave as the judgment from which his appeal herein has been taken. Yet none of the arguments set forth in his second assignment of error address that issue. Instead the appellant's second assignment of error focuses on how he believes his trial counsel was ineffective. It is axiomatic that a court of appeals need not address an assignment of error pertaining to issues that are outside the scope of the judgment entry appealed.

{¶15} The issue of an appellant's argument failing to comport with the judgment entry from which he appealed was recently addressed by this Court in *State v. Harvey,* 2026-Ohio-3154, (5th Dist.):

> An appellate court has jurisdiction to review only those assignments of error relating to the decision of the trial court that is the subject of the notice of appeal filed by an appellant. In the case sub judice, the assignments of error and arguments set forth in the appellant's brief are unrelated to the May 4, 2026, Judgment Entry denying the appellant's Motion to Seal, which is the Judgment Entry from which the appellant appealed, and the Judgment Entry he attached to his Docketing Statement. As such, the appellant's arguments related to the purported lack of evidence, prosecutorial misconduct, ineffective assistance of counsel, and abuse of discretion are not properly before this court. Since the appellant has failed to submit assignments of error and arguments in support thereof that relate to the Judgment Entry from which he appealed, this Court lacks jurisdiction herein. Accordingly, the appellant's appeal is dismissed.

Id. at ¶ 12. In this case, the judgment entry from which the appellant appealed was the March 4, 2026, Entry denying his Motion For Leave To File A Delayed Discovery. The March 4, 2026, Entry was the only entry attached to the appellant's Notice of Appeal, and the appellant's Docketing Statement references the March 4, 2026, Entry as the only one from which he was appealing. However, just as in *Harvey,* the arguments set forth in the appellant's second assignment of error are unrelated to the Entry from which he has appealed. Because an appellate court has jurisdiction to review only those assignments of error relating to the

decision of the trial court that is the subject of the notice of appeal filed by the appellant, the appellant's second assignment of error is dismissed.[1]

CONCLUSION

{¶16} Based upon the foregoing, we find the appellant's first assignment of error to be without merit; it is therefore overruled, and the decision of the Perry County Court of Common Pleas is hereby affirmed. We further find that we lack jurisdiction to consider the appellant's second assignment of error because neither it nor the arguments set forth in support thereof bear any relation to the March 4, 2026, Entry from which the appellant has appealed; accordingly, the appellant's second assignment of error is dismissed.

{¶17} Costs to the appellant.

By: Baldwin, J.

Hoffman, P.J. and

Gormley, J. concur.

[1] The issue of alleged ineffective assistance of the appellant's trial counsel is currently being addressed in the appeal filed by the appellant's appellate counsel in Case No. 26-CA-00004 of the Fifth District Court of Appeals for Perry County, Ohio, which is proceeding simultaneously with the within pro se appeal.