

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-11-056

Appellee

Trial Court No. 2005CR0012

v.

Jeffrey C. Thomas

DECISION AND JUDGMENT

Appellant

Decided: October 12, 2012

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney,
Gwen Howe-Gebers, Chief Assistant Prosecuting Attorney,
and Jacqueline M. Kirian, Assistant Prosecuting Attorney,
for appellee.

Jeffrey Thomas, pro se.

* * * * *

SINGER, P.J.

{¶ 1} Appellant appeals from the judgment denying his “Motion for Evidentiary Hearing Due to Suppressed Exculpatory Evidence Never Seen By Any Court” issued by the Wood County Court of Common Pleas. Because this petition for postconviction relief is barred by the doctrine of res judicata, we affirm.

{¶ 2} In 2005, a jury found appellant, Jeffrey Thomas, guilty of one count of gross sexual imposition and one count of rape of a child under the age of 13. The trial court accepted the verdict, found appellant guilty and sentenced him to concurrent terms of incarceration of two years for gross sexual imposition and seven years for rape.

Appellant's post-trial motions for a new trial, judgment of acquittal and postconviction relief were denied. Appellant was adjudicated a sexually oriented offender. Appellant's conviction was affirmed on appeal. *State v. Thomas*, 6th Dist. No. WD-06-014, 2007-Ohio-3466, *appeal not allowed*, 116 Ohio St.3d 1440, 2007-Ohio-6518, 877 N.E.2d 991. Various unsuccessful motions and appeals followed.

{¶ 3} On March 2, 2009, appellant filed a second petition for postconviction relief seeking to obtain a drawing made by his nine-year-old victim of a mole in proximity to appellant's penis. Appellant claimed this was exculpatory evidence that was denied to him for trial, in that the depiction of such a relationship was inconsistent with the girl's trial testimony. The trial court rejected the petition and we affirmed. *State v. Thomas*, 6th Dist. No. WD-09-025, 2010-Ohio-394.

{¶ 4} On August 8, 2011, appellant filed yet another petition for postconviction relief, the topic of which was, again, the drawing of the penis. Appellant criticized this court for ruling on a picture we had never viewed, accused the prosecutor of unethical conduct in concealing the picture and accused the prosecutor and his accuser of "perjury." When the trial court denied this most recent petition, the appeal followed.

{¶ 5} Appellant sets forth two assignments of error:

I. The trial court abused it's [sic] discretion by engaging in ex parte communications with the state and by using the state's improper objection as its reason for denying appellant's motion.

II. The trial court abused it's [sic] discretion by acting in a manner contrary to reason and law by denying Thomas access to suppressed exculpatory evidence and a fair chance to litigate the issue.

{¶ 6} Appellant's proof of ex parte communication between the trial court and the state is that the judgment entry denying his petition recites the state's opposition, yet the court's docket reveals no memorandum in opposition from the state. This is sparse evidence of collusion and is only relevant if it made a difference. *State v. Alexander*, 5th Dist. No. 2011-CA-00096, 2011-Ohio-6784, ¶ 36, citing *Smith v. Flesher*, 12 Ohio St.2d 107, 233 N.E.2d 137 (1967), paragraph one of the syllabus. It did not make a difference.

{¶ 7} As we explained in our last decision on this matter, appellant's petition was untimely and failed to show either of the conditions that are statutorily required to consider postconviction relief petitions filed out of time. *Thomas*, 2010-Ohio-394, ¶ 17-21. Moreover, we held that the subject matter was or could have been raised in prior proceedings and was thus barred by the doctrine of res judicata. *Id.* at ¶ 21. The doctrine also applies to bar successive petitions for postconviction relief such as this one. *State v. Smith*, 8th Dist. No. 91346, 2009-Ohio-1610, ¶ 18.

{¶ 8} Accordingly, both of appellant's assignments of error are not well-taken.

{¶ 9} On consideration whereof, the judgment of the Wood County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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