

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Nickelson v. Knab*, Slip Opinion No. 2012-Ohio-579.]

NOTICE

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SLIP OPINION NO. 2012-OHIO-579

NICKELSON, APPELLANT, v. KNAB, WARDEN, APPELLEE.

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Habeas corpus—Res judicata bars attempt to obtain successive appellate review of claim of unreasonable delay in sentencing—Res judicata bars filing of successive habeas corpus petition—Judgment denying writ affirmed.

(No. 2011-1472—Submitted February 8, 2012—Decided February 21, 2012.)

APPEAL from the Court of Appeals for Ross County, No. 11CA3244.

Per Curiam.

{¶ 1} We affirm the judgment of the court of appeals dismissing the petition of appellant, LeShawn Nickelson, for a writ of habeas corpus to compel his release from prison. As the court of appeals held, Nickelson previously unsuccessfully raised his claim of unreasonable delay in his sentencing in his direct appeal, *State v. Nickelson*, 4th Dist. No. 09CA8, 2009-Ohio-7006, ¶ 11-12, and res judicata bars Nickelson from using habeas corpus to obtain a successive appellate review of the claim. *Shie v. Smith*, 123 Ohio St.3d 89, 2009-Ohio-4079, 914 N.E.2d 369, ¶ 2. Moreover, because Nickelson either raised or could have

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raised his claim in a previous habeas corpus case, *Nickelson v. Knab*, 128 Ohio St.3d 1423, 2011-Ohio-1049, 943 N.E.2d 570, res judicata also bars him from filing a successive habeas corpus petition. *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378, ¶ 2.

{¶ 2} We also deny Nickelson’s motion for summary judgment. Civ.R. 56, which governs motions for summary judgment, is inapplicable to cases in this court. *See State v. McGettrick*, 31 Ohio St.3d 138, 141, 509 N.E.2d 378, fn. 5 (1987) (“Under ordinary circumstances, neither the Ohio Rules of Criminal Procedure nor the Ohio Rules of Civil Procedure are applicable to cases on appeal”); *State ex rel. Physicians Commt. for Responsible Medicine v. Ohio State Univ. Bd. of Trustees*, 108 Ohio St.3d 288, 2006-Ohio-903, 843 N.E.2d 174, ¶ 17 (“The Rules of Practice that govern original actions filed in this court do not permit parties to file motions for summary judgment”). And notwithstanding Nickelson’s claim to the contrary, appellee *did* file a timely merit brief.

{¶ 3} Further, we deny Nickelson’s request for oral argument because the parties’ briefs are sufficient for the court to decide this appeal. *State ex rel. Tindira v. Ohio Police & Fire Pension Fund*, 130 Ohio St.3d 62, 2011-Ohio-4677, 955 N.E.2d 963, ¶ 55.

{¶ 4} Finally, we deny Nickelson’s motion to strike appellee’s merit brief.

Judgment affirmed.

O’CONNOR, C.J., and PFEIFER, LUNDBERG STRATTON, O’DONNELL, LANZINGER, CUPP, and MCGEE BROWN, JJ., concur.

LeShawn Nickelson, pro se.

Michael DeWine, Attorney General, and Morgan A. Linn, Assistant Attorney General, for appellee.
