

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 17AP-53
 : (C.P.C. No. 07CR-4563)
 Kim L. Anderson, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on June 29, 2017

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

On brief: *Kim L. Anderson*, pro se.

APPEAL from the Franklin County Court of Common Pleas

HORTON, J.

{¶ 1} Defendant-appellant, Kim L. Anderson, pro se, appeals from a judgment of the Franklin County Court of Common Pleas denying his motion to waive or suspend restitution. For the following reasons, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} The facts are more fully detailed in appellant's direct appeal of his convictions, *State v. Anderson*, 10th Dist. No. 08AP-1071, 2009-Ohio-6566, ¶ 1-9. As relevant to this appeal, on October 3, 2008, a jury found appellant guilty of multiple offenses including money laundering, engaging in a pattern of corrupt activity, and complicity to commit the following: theft, identity fraud, and forgery, for his facilitation of a \$1.1 million mortgage-fraud scheme. The trial court sentenced appellant to a 15-year prison term and ordered him to pay restitution in the total amount of \$1,178,750.

{¶ 3} Appellant appealed his convictions to this court, raising five assignments of error. We overruled appellant's assignments of error and affirmed his convictions. *Id.* Appellant filed an appeal with the Supreme Court of Ohio and, in an entry filed on May 5, 2010, the Supreme Court accepted appellant's appeal relating only to one assignment of error, which alleged that the trial court erred by not making the required findings prior to imposing consecutive sentences. On January 25, 2011, the Supreme Court affirmed our decision. *In re Cases Held for the Decision in State v. Hodge*, 128 Ohio St.3d 234, 2011-Ohio-228, ¶ 6.

{¶ 4} Meanwhile, appellant began to engage in extensive post-judgment motion practice. Our review of the record shows that appellant has filed approximately 35 post-judgment motions, requests, and petitions with the trial court, many of which are repetitive, and several raise issues relating to restitution. In addition, this court has issued seven prior decisions addressing appellant's appeals and multiple memorandum decisions regarding appellant's motions to reopen, reconsider, certify a conflict, and for en banc consideration. The Supreme Court has also addressed this case on seven occasions, including denying two applications to disqualify the trial judge. This court noted the following in rejecting one of appellant's appeals:

This court has previously noted that appellant, following the disposition of his appeal, "inundated the trial court with repetitive motions and filings, including an affidavit to disqualify respondent. * * * The trial court has considered these filings with admirable patience, but recently noted: 'Should [relator] continue to file motions that attempt to re-litigate his conviction, which are now barred based upon the affirmance of his criminal conviction AND the denial of his de facto post-conviction relief filings, the Court will be compelled to consider asking its statutory counsel to bring vexatious litigator proceedings against this [appellant], and/or consider the imposition of sanctions.'" (Emphasis sic.) *State ex rel. Anderson v. Sheeran*, 10th Dist. No. 11AP-990, 2012-Ohio-2949, ¶ 7.¹

State v. Anderson, 10th Dist. No. 12AP-133, 2012-Ohio-4733, ¶ 8.

¹ On January 11, 2016, the trial court, in a decision and entry overruling appellant's motion to correct void sentence, stated "[f]inally, this Court invites the State of Ohio to commence proceedings, as noted in a previous decision of the Tenth District Court of Appeals, to have this Defendant declared a vexatious litigator." (Decision and Entry at 2.)

{¶ 5} On August 19, 2016, appellant filed a motion to waive or suspend restitution. Appellant complained that the trial court committed various errors in regard to ordering restitution, including, chiefly, not having a hearing on the issue of the amount of restitution. *Id.* The trial court ruled on December 30, 2016 that "[t]his case is before the Court on Defendant's Motion to Waive or Suspend Restitution filed August 19, 2016. Upon consideration, the Court hereby DENIES said motion." (Entry at 1.) Appellant filed a notice of appeal on January 20, 2017.

II. ASSIGNMENTS OF ERROR

{¶ 6} Appellant's six assignments of error are lengthy, and at times difficult to follow. However, in light of our holding, we will briefly summarize. In the first five assignments of error, appellant alleges that the trial court erred as a matter of law, and abused its discretion when the court: (1) failed to waive, suspend or modify the restitution amount; (2) failed to hold a hearing when trial counsel disputed the restitution amount; (3) determined appellant's ability to pay the restitution amount; (4) failed to notify appellant of the consequences of failure to pay restitution; and (5) failed to give facts, findings, and conclusions of law in denying appellant's motion to waive, suspend or modify the restitution amount. In his sixth assignment of error, appellant alleges that his trial counsel provided ineffective assistance in failing to request a restitution hearing when the amount was disputed at sentencing.

III. DISCUSSION—APPELLANT'S MOTION BARRED

{¶ 7} Appellant's motion complaining about restitution and demanding a restitution hearing should be treated as a postconviction petition. *State v. Reynolds*, 79 Ohio St.3d 158, 160 (1997); *State v. Timmons*, 10th Dist. No. 11AP-895, 2012-Ohio-2079, ¶ 6. " '[A] trial court's decision granting or denying a postconviction petition * * * should be upheld absent an abuse of discretion; a reviewing court should not overrule the trial court's finding on a petition for postconviction relief that is supported by competent and credible evidence.' " *State v. Sidibeh*, 10th Dist. No. 12AP-498, 2013-Ohio-2309, ¶ 7, quoting *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, ¶ 58. An abuse of discretion connotes a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). The State argues that appellant's motion is barred by res judicata and the law of the case doctrine. We agree.

{¶ 8} Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at trial, which resulted in that judgment of conviction, or on an appeal from that judgment. *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus. The doctrine of res judicata " 'promotes principles of finality and judicial economy by preventing endless relitigation of an issue upon which there was already a full or fair opportunity to be heard.' " *Daniel v. Williams*, 10th Dist. No. 13AP-155, 2014-Ohio-273, ¶ 18, quoting *State v. Jama*, 10th Dist. No. 11AP-210, 2012-Ohio-2466, ¶ 45, citing *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, ¶ 18.

{¶ 9} The law of the case doctrine also is applicable to this case. As we recently stated in *State v. Monroe*, 10th Dist. No. 13AP-598, 2015-Ohio-844, ¶ 29:

The law of the case is a longstanding doctrine in Ohio jurisprudence. "[T]he doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels." *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 11 Ohio B. 1, 462 N.E.2d 410 (1984). "The doctrine is necessary to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution." *State ex rel. Potain v. Mathews*, 59 Ohio St.2d 29, 32, 391 N.E.2d 343 (1979).

{¶ 10} As such, appellant's current claims could have been raised on direct appeal, including his ineffective assistance of counsel claim as it arises from counsel's alleged failure to request a hearing on the restitution issue at the sentencing hearing in which appellant was present. In addition, appellant could have tried to raise this issue in one of his earlier motions, and in fact did challenge the orders of restitution in three earlier trial court filings.

{¶ 11} On June 19, 2009, appellant filed a motion to stay collection of restitution which the trial court denied in a July 7, 2009 decision and entry. On August 25, 2011, appellant filed a motion to vacate restitution, contending that the amount of restitution had not been properly determined because no hearing was held to determine actual

economic loss, which the trial court denied in a September 7, 2011 decision and entry, based on res judicata. On September 25, 2013, appellant filed another motion for resentencing, again complaining about restitution issues, which the trial court denied in a decision and entry filed on December 19, 2013.

{¶ 12} Appellant appealed from the denial of the September 25, 2013 motion, and this court affirmed, holding that the challenges to restitution were barred by res judicata:

Appellant argues that the trial court erred by not complying with Ohio laws when making its restitution determination. Issues regarding the determination of restitution are matters that could have been raised in his direct appeal. Because appellant did not raise those issues in that appeal, res judicata bars their consideration now. *State v. Musselman*, 2d Dist. No. 25295, 2013-Ohio-1584, ¶ 25; *State v. Bonanno*, 3d Dist. No. 1-02-21, 2002-Ohio-4005, ¶ 13.

State v. Anderson, 10th Dist. No. 14AP-61, 2014-Ohio-3699, ¶ 10.

{¶ 13} As such, because all of appellant's claims regarding restitution could have been raised on direct appeal or in his previous motions, further review is barred by res judicata. In addition, this court has conclusively ruled that appellant's appeal of restitution issues is barred by res judicata. *Id.* Therefore, the law of the case doctrine also bars appellant's claims. The trial court did not abuse its discretion in overruling appellant's motion to waive or suspend restitution.

IV. DISPOSITION

{¶ 14} Based on the foregoing, appellant's six assignments of error are overruled. Therefore, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and KLATT, JJ., concur.
