

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 22806
v.	:	T.C. NO. 06 CR 1378
BRIAN A. JAMISON	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 17th day of July, 2009.

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Attorney for Plaintiff-Appellee

BRIAN A. JAMISON, #549-327, P. O. Box 5500, Chillicothe, Ohio 45601
Defendant-Appellant

DONOVAN, P.J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Brian Anthony Jamison, filed June 23, 2008. On March 15, 2007, following a jury trial, Jamison was convicted of possession of crack cocaine in an amount equal to or greater than 25 grams but less than 100 grams, guilty of possession of cocaine in an amount equal to or greater than five grams, guilty of

possession of heroin, guilty of possession of criminal tools with the intent to use the tools to commit the above possession offenses, guilty of having a weapon while under a disability, and guilty of aggravated possession of drugs. The trial court sentenced Jamison to nine years in prison. Jamison filed a direct appeal, and we affirmed the judgment of the trial court.

{¶ 2} On January 29, 2008, Jamison filed a petition for postconviction relief, and on February 14, 2008, he filed a motion to amend, attached to which were three affidavits in support of his petition. On February 19, 2008, the State filed a motion for summary judgment and dismissal, which the trial court granted on May 28, 2008, due to the untimeliness of Jamison’s petition for postconviction relief.

{¶ 3} Jamison asserts one assignment of error as follows:

{¶ 4} “THE COMMON PLEAS COURT ERRED IN ITS MAY 28, 2008 DECISION WHEN FAILING TO APPLY ‘PRESUMPTION OF TIMELY DELIVERY’ TO DEFENDANT’S POSTCONVICTION PETITION, WHEN THE DEFENDANT SUBMITTED HIS PETITION IN A TIMELY MANNER MAILING IT NINE DAYS PRIOR TO THE DEADLINE FOR FILING.”

{¶ 5} “[A] postconviction proceeding is not an appeal of a criminal conviction but, rather, a collateral civil attack on the judgment. (Citation omitted). Therefore, a petitioner receives no more rights than those granted by the statute.

{¶ 6} “It may be useful to note that cases of postconviction relief pose difficult problems for courts, petitioners, defense counsel and prosecuting attorneys alike. Cases long considered to be fully adjudicated are reopened, although memories may be dim and proof difficult. The courts justifiably fear frivolous and interminable appeals from prisoners who have

their freedom to gain and comparatively little to lose. (Citation omitted).” *State v. Calhoun*, 86 Ohio St.3d 279, 2881,82, 1999-Ohio-102.

{¶ 7} R.C. 2953.21 provides:

{¶ 8} “(A)(1)(a) Any person who has been convicted of a criminal offense * * * and who claims that there was such a denial or infringement of the person’s rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States * * * may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. The petitioner may file a supporting affidavit and other documentary evidence in support of the claim for relief.

{¶ 9} * *

{¶ 10} “(2) Except as otherwise provided in section 2953.23 of the Revised Code, a petition under division (A)(1) of this section shall be filed no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication * * * .”

{¶ 11} The transcript of Jamison’s trial was filed on July 31, 2007, and Jamison’s January 29, 2008 petition was filed 182 days after the transcript was filed. We need not reach Jamison’s timeliness argument because the trial court correctly denied Jamison’s petition since it is barred by the doctrine of res judicata.

{¶ 12} The Ohio Supreme Court, in *State v. Perry* (1967), 10 Ohio St.2d 175, syllabus at ¶ 9, determined, “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 the trial, which resulted in that judgment of conviction, or on an appeal from that judgment.”

{¶ 13} Jamison’s arguments regarding prosecutorial misconduct, improper jury instructions, ineffective assistance of trial counsel, the improper admission of evidence, and Jamison’s alleged defense based upon the testimony of a witness who refused to incriminate himself at trial, are based upon trial events, and they were, or should have been, the subject of his direct appeal. Since Jamison’s petition for postconviction relief is barred by the doctrine of res judicata, the trial court properly denied it. Jamison’s sole assigned error is overruled, and the judgment of the trial court is affirmed.

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FAIN, J. and GRADY, J., concur.

Copies mailed to:

Johnna M. Shia
Brian A. Jamison
Hon. Mary L. Wiseman