

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-210659
	:	TRIAL NO. B-8802582
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
LEWIS THOMAS, III,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Lewis Thomas, III, appeals the common pleas court's judgment denying his R.C. 2953.21 petition for postconviction relief. Because Mr. Thomas's postconviction claim challenging the trial court's alleged lack of subject-matter jurisdiction over his felony trial has previously been considered by this court as well as the common pleas court, Mr. Thomas's petition is barred by res judicata. Accordingly, we affirm the common pleas court's judgment.

In 1988, Mr. Thomas was convicted of aggravated murder, aggravated burglary, three counts of felonious assault and firearm specifications. Except for the sentences for the specifications, this court affirmed his convictions and sentences on direct appeal. *See State v. Thomas*, 1st Dist. Hamilton No. C-880637, 1990 Ohio App. LEXIS 1294 (Apr. 4, 1990), *appeal not accepted*, 54 Ohio St.3d 713, 562 N.E.2d 159 (1990). Since then, Mr. Thomas has unsuccessfully challenged his convictions in numerous

postconviction proceedings. *See State v. Thomas*, 1st Dist. Hamilton No. C-910145 (Feb. 14, 1992); *State v. Thomas*, 1st Dist. Hamilton No. C-050245, 2005-Ohio-6823; *State v. Thomas*, 1st Dist. Hamilton No. C-060355 (May 2, 2007); *State v. Thomas*, 2017-Ohio-4403, 93 N.E.3d 227 (1st Dist.), *delayed appeal denied*, 150 Ohio St.3d 1450, 2017-Ohio-8136, 83 N.E.3d 937.

Additionally, Mr. Thomas filed a 2016 postconviction motion challenging the trial court's subject-matter jurisdiction. Among other claims, Mr. Thomas contended that the three-judge panel presiding over his trial had lacked subject-matter jurisdiction over his felony cases because the grand jury had allegedly not returned the indictment for the charged offenses to the trial court or filed it with the clerk of courts in compliance with Crim.R. 6(F). The common pleas court overruled the motion. We affirmed the court's judgment on appeal, noting that the constitutional deprivations alleged by Mr. Thomas, even if demonstrated, would not have rendered his convictions void because the trial court had subject-matter jurisdiction. *State v. Thomas*, 1st Dist. Hamilton Nos. C-170399 and C-170405, 2018 Ohio App. LEXIS 3917 (Sept. 7, 2018).

In March 2020, Mr. Thomas filed an R.C. 2953.21 petition for postconviction relief raising the same argument—that his convictions were void because the three-judge panel that had presided over his trial lacked subject-matter jurisdiction where the indictment had not been filed with the clerk of courts pursuant to Crim.R. 6(F). The common pleas court denied his petition, determining that his convictions were not void. Mr. Thomas did not file a timely notice of appeal from this decision.

In his most recent postconviction petition, which was denied by the common pleas court and is the subject of this appeal, Mr. Thomas again contended that the three-judge panel that presided over his felony trial lacked subject-matter jurisdiction because

the indictment had not been returned to the trial court or filed with the clerk of courts as required by Crim.R. 6(F).

In his appeal, Mr. Thomas asserts in a single assignment of error that the common pleas court erred by denying his petition without addressing his jurisdictional claims. We disagree. Mr. Thomas's most recent filing was a successive petition for postconviction relief, and it was filed well after the time prescribed by R.C. 2953.21(A)(2) had expired. Although a common pleas court may entertain a late postconviction petition if the petition satisfies the jurisdictional requirements of R.C. 2953.23, Mr. Thomas does not argue that he has met those requirements. Instead, he maintains that regardless of the statutory time limitations, the issue of subject-matter jurisdiction cannot be waived, and thus, can be raised for the first time in a postconviction petition. *See State v. Allen*, 6th Dist. Lucas No. L-17-1225, 2018-Ohio-978, ¶ 8. Nevertheless, res judicata will apply to bar relitigation of the issue of subject-matter jurisdiction. *In re A.R.*, 10th Dist. Franklin No. 16AP-482, 2017-Ohio-1575, ¶ 10. "[O]nce a jurisdictional issue has been fully litigated and determined by a court that has authority to pass upon the issue, such determination is res judicata in a collateral action and can only be attacked by direct appeal." *Id.*, citing *Squires v. Squires*, 12 Ohio App.3d 138, 468 N.E.2d 73 (12th Dist.1983). Because this court as well as the common pleas court has already considered and determined that the trial court had subject-matter jurisdiction over Mr. Thomas's felony trial and that his convictions were not void, res judicata applies to bar his most recent petition for postconviction relief. Accordingly, Mr. Thomas's single assignment of error is overruled, and the common pleas court's judgment is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**BERGERON, P.J., WINKLER and BOCK, JJ.**

**OHIO FIRST DISTRICT COURT OF APPEALS**

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To the clerk:

Enter upon the journal of the court on October 14, 2022,  
per order of the court\_\_\_\_\_.

Administrative Judge