

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

STATE OF OHIO,	:	APPEAL NO. C-230271
	:	TRIAL NO. B-8802582
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
LEWIS THOMAS, III,	:	
Defendant-Appellant.	:	

The court sua sponte removes this case from the regular calendar and places it on the court's accelerated calendar, 1st Dist. Loc.R. 11.1(C)(1), 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.

Defendant-appellant Lewis Thomas, III, appeals the common pleas court's judgment denying his Crim.R. 33(B) motion for leave to file a motion for a new trial. For the following reasons, we affirm.

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*, 1st Dist. Hamilton Nos. C-170399 and C-170405, 2018 Ohio App. LEXIS 3917 (Sept. 7, 2018); *State v. Thomas*, 1st Dist. Hamilton No. C-210659, 2022 Ohio App. LEXIS 3476 (Oct. 14, 2022), *appeal not accepted*, 169 Ohio St.3d 1424, 2023-Ohio-212, 201 N.E.3d 915.

Additionally, in April 2015, Mr. Thomas moved for leave to file a motion for a new trial based on newly discovered evidence. In support, Mr. Thomas submitted documents, which he had received in 2009 from the appellate attorney of his accomplice, arguing that those documents demonstrated that he had been denied a fair trial. The trial court denied the motion for leave, and we affirmed that decision on appeal. *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. We also denied Mr. Thomas's delayed application for reconsideration of that decision.

Eight years later, in February 2023, Mr. Thomas again moved for leave under Crim.R. 33(B) to file a new trial motion based on newly discovered evidence, submitting in support the same evidence that he had submitted to support his 2015 motion. The state argued that the motion for leave was barred by res judicata or the law-of-the-case doctrine, and the common pleas court summarily denied the motion for leave. Mr. Thomas now appeals.

In a single assignment of error, he contends that the common pleas court abused its discretion and violated his right to due process of law by denying his motion for leave without issuing findings of fact and conclusions of law supporting the court's decision or specifically finding that Mr. Thomas was **not** unavoidably prevented from discovering the new evidence supporting his new-trial motion during his trial or within

120 days from the date he was found guilty of the charged offenses. We are unpersuaded.

There is no requirement in Crim.R. 33(B) or in caselaw discussing that rule that a trial court must issue findings of fact and conclusions of law when denying such a motion. Nor is there such a requirement that a court must explicitly state on the record that the defendant was not unavoidably prevented from discovering the new evidence prior to denying a motion for leave under Crim.R. 33(B), especially where the record clearly supports the court's denial of the motion. And, here, the record clearly supports the lower court's denial of Mr. Thomas's Crim.R. 33(B) motion for leave on the basis of the law-of-the-case doctrine.

The law-of-the-case doctrine is well established in Ohio law. 'The doctrine of law of the case comes into play only with respect to issues previously determined.' The doctrine provides that legal questions and issues resolved by a reviewing court in a prior appeal continue as the law of that case for any succeeding proceeding at both the trial and appellate levels. The law of the case doctrine 'is rooted in principles of res judicata and issue preclusion [and] ensures consistent results in a case, avoids endless litigation by settling the issues, and preserves the constitutional structure of superior and inferior courts.' The doctrine ensures consistency of results in a case to avoid repetitive, endless litigation on settled issues.

(Citations Omitted.) *Levine v. Kellogg*, 10th Dist. Franklin No. 21AP-338, 2022-Ohio-3440, ¶ 48, citing *Giancola v. Azem*, 153 Ohio St.3d 594, 2018-Ohio-1694, 109 N.E.3d 1194. Here, the "newly-discovered" evidence that Mr. Thomas relied upon to support

his motion for leave filed in 2015 is the same evidence attached to his most recent motion for leave that is at issue in this appeal. Because this court has already reviewed that evidence and determined that Mr. Thomas's 2015 Crim.R. 33(B) motion for leave was properly denied, the doctrine of the law of the case supports the lower court's denial of Mr. Thomas's most recent motion for leave.

Accordingly, we overrule Mr. Thomas's single assignment of error, and affirm the common pleas court's judgment.

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.

To the clerk:

Enter upon the journal of the court on November 22, 2023
per order of the court_____.

Administrative Judge