

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

STATE OF OHIO,	:	APPEAL NO. C-250211
	:	TRIAL NO. B-8802582
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY</i>
LEWIS THOMAS, III,	:	
Defendant-Appellant.	:	

**MOORE, Judge.**

This court sua sponte removes this cause from the regular calendar and places it on the court's accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

In 1988, defendant-appellant Lewis Thomas, III, committed a bank robbery during which his accomplice killed a teller. *State v. Thomas*, 1990 Ohio App. LEXIS 1294, \*1-2 (1st Dist. Apr. 4, 1990), *appeal denied*, 54 Ohio St.3d 713 (1990). Thomas attempted to flee police but was stopped when he was bitten by the police dog that pursued him. Thomas was taken to the hospital to treat the dog bite. Thomas was Mirandized at the hospital, and he gave a statement admitting to participating in the robbery. Thomas, however, denied any intention to hurt anyone. *Id.*

The docket states that Thomas's indictment for aggravated murder, aggravated robbery, attempted aggravated murder, and three counts of felonious assault with specifications was "reported and filed" on May 30, 1988.

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Thomas filed a “Motion of Defects in Indictment and Prosecution” pro se on August 10, 1988, which requested that the State “answer specifically to the defects and prosecution in the indictment charging defendant with attempt[ed] Aggravated Murder” and that the court permit him to appear pro se. Thomas also filed a “Motion to Dismiss the Indictment,” which asserted that the court complied with Crim.R. 6 as the grand jury that returned the indictment consisted of nine members but failed to comply with R.C. 2939.02, which required a 15-member grand jury. The motion asserted the trial court’s failure to comply with R.C. 2939.02 meant that it did not have subject-matter jurisdiction over Thomas. Both motions were denied.

A three-judge panel found Thomas guilty as charged. Thomas appealed, arguing, inter alia, the trial court erred by denying his motion alleging defects in the indictment and his prosecution, and a claim of ineffective assistance of counsel. *Thomas*, 1990 Ohio App. LEXIS 1294, at \*17. This court agreed with appellate counsel’s conclusion that no prejudicial error existed regarding those claims and affirmed the trial court’s judgments, except to remand the matter for resentencing on the firearm specifications. *Id.*

### Thomas’s Subsequent Appeals<sup>1</sup>

In January 2016, Thomas filed a “Writ of Error Pursuant to [R.C.] 2945.831 and Crim.R. 52(B) Review of Trial Court Errors,” which was denied by the trial court. *See State v. Thomas*, 2018 Ohio App. LEXIS 3917, \*2 (1st Dist. Sept. 7, 2018). Thomas argued, inter alia, that the indictment against him was not returned to the court and

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<sup>1</sup> The following captures some, but not all of Thomas’s post-conviction filings. *See State v. Thomas*, No. C-910145 (1st Dist. Feb. 14, 1992), *appeal denied*, *State v. Thomas*, 64 Ohio St.3d 1438; *State v. Thomas*, 2005-Ohio-6823 (1st Dist.), *appeal denied*, *State v. Thomas*, 2006-Ohio-1703; *State v. Thomas*, No. C-060355 (1st Dist. May 2, 2007); *State v. Thomas*, 2017-Ohio-4403 (1st Dist.), *delayed appeal denied*, *State v. Thomas*, 2017-Ohio-8136; *State v. Thomas*, 2023 Ohio App. LEXIS 4070 (1st Dist. Nov. 22, 2023).

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filed with the clerk as required under Crim.R. 6(F). On appeal, Thomas restated the grounds for relief advanced in his motion as his nine assignments of error. This court affirmed the trial court's judgment, with modifications to reflect that the dismissal of Thomas's motion was proper because the trial court had no jurisdiction to entertain his claims. *Id.* at \*4.

In March 2020, Thomas filed a petition to vacate or set aside his convictions, again arguing that the trial court lacked subject-matter jurisdiction and alleging that the indictment was not returned to the trial court or entered in the docket. The trial court denied the petition, finding that Thomas failed to meet the requirements under R.C. 2953.23 to justify the untimeliness of his petition, and Thomas's convictions were not void. This court dismissed Thomas's appeal for lack of jurisdiction as his notice of appeal was untimely. *State v. Thomas*, No. C-210188 (1st Dist. May 7, 2021).

In June 2021, Thomas filed another postconviction petition raising the same arguments, which was denied by the trial court. This court held that res judicata applied and affirmed the trial court's judgment in *State v. Thomas*, 2022 Ohio App. LEXIS 3476 (1st Dist. Oct. 14, 2022), *appeal denied*, *State v. Thomas*, 2023-Ohio-212.

On July 25, 2024, Thomas filed another petition to vacate or set aside his convictions, challenging defense counsel's effectiveness in failing to challenge the trial court's lack of subject-matter jurisdiction.<sup>2</sup> Thomas attached to his petition his indictment, the docket, and the State's memorandum requesting that a third person who was involved with the robbery be charged in federal court to secure his testimony against Thomas. The trial court denied the petition as untimely under R.C. 2953.21. This appeal followed.

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<sup>2</sup> This challenge was made on the same grounds raised in his 2016, 2020, and 2021 petitions.

***Thomas's Claims are Barred by Res Judicata***

Subject-Matter Jurisdiction

In his first assignment of error, Thomas asserts that the trial court abused its discretion by failing to address his challenge to the trial court's subject-matter jurisdiction. He argues that the indictment was not delivered to the judge as required by Crim.R. 6(F) and R.C. 2939.22. Thomas further asserts that the trial court wrongly concluded that he failed to support his July 2024 petition to vacate or set aside his convictions with supporting documents because he had attached them to the petition, which was mailed to the Hamilton County Court of Common Pleas on July 25, 2024.

This issue has previously been considered by this court and, as we previously held, this issue is barred by res judicata. *See Thomas*, 2022 Ohio App. LEXIS 3476 at \*3-4. Thomas's first assignment of error is overruled.

Thomas's Ineffective-Assistance-of-Counsel Claim is Barred by Res Judicata

In his second assignment of error, Thomas argues that defense counsel was ineffective for failing to investigate whether the three-judge panel that presided over Thomas's 1988 trial had subject-matter jurisdiction. He contends that defense counsel should have objected to the three-judge panel on that basis.

This court previously considered an ineffective-assistance-of-counsel claim by Thomas in *Thomas*, 1990 Ohio App. LEXIS 1294, at \*17. Res judicata does not bar a postconviction ineffective-assistance-of-counsel claim when either (1) the petitioner had the same attorney at trial and on appeal; or (2) he must rely on evidence outside the trial record to establish his claim for relief. *State v. Blanton*, 2022-Ohio-3985, ¶ 2. When the petitioner had a new attorney on appeal and the claim could have been litigated based on the trial record, res judicata applies and the postconviction claim is barred. *Id.*

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Thomas's ineffective-assistance-of-counsel claim is barred by res judicata as it was raised in his direct appeal and in subsequent post-conviction proceedings, he had a new attorney on appeal, and the evidence he must rely on is the record—the docket. Thomas's second assignment of error is, therefore, overruled.

We affirm the trial court's judgment.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

**KINSLEY, P.J.**, and **CROUSE, J.**, concur.

**To the clerk:**

**Enter upon the journal of the court on 12/10/2025 per order of the court.**

By:   
**Administrative Judge**