

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

STATE OF OHIO,	:	APPEAL NO. C-110347
	:	TRIAL NO. B-0511389
Respondent-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
ERNEST SEAY, a.k.a. ERNEST FREEMAN,	:	
	:	
Petitioner-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Petitioner-appellant Ernest Seay, a.k.a Ernest Freeman, presents on appeal four assignments of error challenging the Hamilton County Common Pleas Court's judgment denying his R.C. 2953.21 petition for postconviction relief. We affirm the court's judgment.

Seay was convicted in 2009 upon guilty pleas to two counts of aggravated robbery and a single count of escape. He unsuccessfully appealed his convictions to this court and to the Ohio Supreme Court. *See State v. Seay*, 1st Dist. No. C-090638 (June 23, 2010), *leave to file delayed appeal denied*, 126 Ohio St.3d 1596, 2010-Ohio-4928, 935 N.E.2d 44. He also challenged his convictions in a timely filed postconviction petition. The common pleas court denied the petition, and this appeal followed.

In his petition, Seay contended that he was denied the effective assistance of counsel, because his trial counsel failed to move to sever indictment counts one through three from counts four through seven, and because counsel failed to “file a motion to dismiss” one of the “allied offenses” of aggravated robbery and robbery charged in counts five and six. These claims presented matters that could fairly have been determined without resort to evidence outside the record. Thus, the claims were barred under the doctrine of res judicata. *See State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus.

Seay also assailed his trial counsel’s effectiveness in failing to “contact or call [the] physician treating [Seay] for [a] psychiatric disorder at the time of [his] offenses” and in “misinform[ing]” him “that there was no need to mount a defense because [he] would get the minimum sentence [of] 6 years because of his assisting the prosecutor’s office with 11 felony convictions.” These claims were properly denied because Seay failed to sustain his burden of submitting evidentiary material setting forth sufficient operative facts to demonstrate substantive grounds for relief. *See R.C. 2953.21(C); State v. Pankey*, 68 Ohio St.2d 58, 428 N.E.2d 413 (1981); *State v. Jackson*, 64 Ohio St.2d 107, 413 N.E.2d 819 (1980).

Because the common pleas court properly denied Seay’s postconviction petition, we overrule the assignments of error and affirm the court’s judgment.

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

HILDEBRANDT, P.J., SUNDERMANN and HENDON, JJ.

To the clerk:

Enter upon the court’s journal on March 9, 2012, by order of the court.

Presiding Judge