

[Cite as *State v. Wheeler*, 2009-Ohio-4380.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 08AP-503
v.	:	(C.P.C. No. 03CR05-3056)
	:	
Chad R. Wheeler,	:	(ACCELERATED CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 27, 2009

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Chad R. Wheeler, pro se.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, P.J.

{¶1} Defendant-appellant, Chad R. Wheeler ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which denied his request for post-conviction relief. For the following reasons, we affirm.

{¶2} In May 2004, the trial court sentenced appellant to community control for his robbery conviction. On August 8, 2005, the probation department ordered appellant

arrested for community control violations and placed in custody until further action by the trial court. On September 23, 2005, the probation department asked the trial court to revoke appellant's community control due to the violations. On April 5, 2006, the trial court held a community control revocation hearing. At this hearing, appellant stipulated to the community control violations, and the trial court revoked appellant's community control. This same day, the trial court imposed a prison term on appellant. An attorney represented appellant when the trial court revoked his community control and sentenced him to prison.

{¶3} In January 2008, appellant filed a "motion to reduce sentence." Appellant complained that the trial court violated constitutional due process guarantees when it revoked his community control without holding a timely hearing. In February 2008, appellant repeated this argument in a "petition for relief after judgment" pursuant to R.C. 2953.21. The trial court denied these motions, and appellant appeals.

{¶4} Appellant did not formulate assignments of error in his appellate brief as App.R. 16(A) requires. Nevertheless, in the interest of justice, we will address the legal arguments that appellant has raised. See *Oladele v. Adegoke-Oladele*, 10th Dist. No. 08AP-92, 2008-Ohio-4005, ¶3. Appellant asserts that the trial court erred by denying his January and February 2008 motions.

{¶5} Appellant sought post-conviction relief, pursuant to R.C. 2953.21, in the February 2008 motion. In the January 2008 motion, appellant sought relief under rules of criminal procedure governing federal courts, but federal procedural rules are not binding on state courts. See *Chickey v. Watts*, 10th Dist. No. 04AP-818, 2005-Ohio-

4974, ¶23. In the January 2008 motion, appellant also sought relief under federal habeas law, but this law is also inapplicable in state courts. See 28 U.S.C. 2254. Appellant specified no vehicle for relief available in state court. Given this irregularity, we construe the January 2008 motion as an R.C. 2953.21 post-conviction petition because appellant raised a collateral challenge to his sentence on constitutional grounds. See *State v. Bush*, 96 Ohio St.3d 235, 2002-Ohio-3993, ¶8-10.

{¶6} We need not disturb a trial court's decision to deny a post-conviction petition absent an abuse of discretion. *State v. White*, 118 Ohio St.3d 12, 2008-Ohio-1623, ¶45. An abuse of discretion connotes more than an error of law or judgment; it entails a decision that is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶7} Res judicata bars a defendant who was represented by counsel from raising an issue in a post-conviction petition if he could have raised the issue on direct appeal. *State v. Reynolds*, 79 Ohio St.3d 158, 161, 1997-Ohio-304. A direct appeal concerns a review of evidence that is part of the trial court record. *Morgan v. Eads*, 104 Ohio St.3d 142, 2004-Ohio-6110, ¶13. In his post-conviction petitions, appellant argues that the trial court did not hold a timely community control revocation hearing. This issue could have been reviewed on direct appeal, given that documents in the trial court record specify (1) the date that the probation department alleged that appellant violated community control conditions, (2) the date that the probation department ordered appellant be placed in custody due to the allegations, and (3) the date that the trial court held proceedings on the matter and revoked appellant's community control. Appellant

did not appeal his community control revocation, however. Because appellant could have challenged his community control revocation on direct appeal, and because appellant was previously represented by counsel, we conclude that res judicata bars appellant from challenging the revocation in his post-conviction petitions.

{¶8} Therefore, we conclude that the trial court did not abuse its discretion by denying appellant's post-conviction petitions. We affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and KLATT, JJ., concur.
