

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

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| STATE OF OHIO, | : | APPEAL NO. C-160821 |
| Respondent-Appellee, | : | TRIAL NO. B-1202504-A |
| vs. | : | <i>JUDGMENT ENTRY.</i> |
| JAMES DABNEY, | : | |
| Petitioner-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.

Petitioner-appellant James Dabney appeals the Hamilton County Common Pleas Court’s judgment denying his R.C. 2953.21 petition for postconviction relief. We affirm the court’s judgment.

Dabney was convicted in 2014 of money laundering, theft, and telecommunications fraud. We affirmed his convictions on direct appeal. *State v. Dabney*, 1st Dist. Hamilton No. C-140575, 2015-Ohio-4142, *appeals not accepted*, 144 Ohio St.3d 1479, 2016-Ohio-462, 45 N.E.3d 245.

In this appeal from the denial of his 2016 postconviction petition, Dabney advances two assignments of error. We do not reach the merits of, because we have no jurisdiction to entertain, Dabney’s second assignment of error, alleging “fraud on the court,” because he did not present this challenge in the postconviction petition from

which this appeal derives. *See State v. Gipson*, 1st Dist. Hamilton Nos. C-960867 and C-960881, 1997 WL 598397 (Sept. 26, 1997). And we overrule his first assignment of error upon our determination that the common pleas court properly denied Dabney's postconviction petition without an evidentiary hearing.

Dabney's fifth through eighth and eighteenth postconviction claims alleged violations of rights guaranteed under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution that had been advanced in support of his pretrial motions to suppress and for discovery. His thirteenth and fourteenth claims challenged the money-laundering verdict form and the aiding-and-abetting jury instruction. Those claims were subject to dismissal without a hearing under the doctrine of res judicata, because they could fairly have been determined in the direct appeal, based upon the trial record and without resort to evidence outside the record. *See State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus.

The balance of Dabney's postconviction claims, alleging Fourth Amendment and Confrontation Clause violations and prosecutorial misconduct, along with his trial counsel's ineffectiveness concerning those alleged constitutional violations, presented matters that depended for their resolution upon evidence outside the record. Thus, those claims were not, as the common pleas court concluded, barred under the doctrine of res judicata. *See Perry* at paragraph nine of the syllabus.

But those claims were properly denied without an evidentiary hearing upon the common pleas court's alternative conclusion that Dabney failed to demonstrate substantive grounds for relief. In the proceedings below, Dabney bore the initial burden of producing outside evidence that, along with the matters contained in the trial record, demonstrated the constitutional violations alleged in those claims. *See R.C. 2953.21(D) and (F); State*

v. Pankey, 68 Ohio St.2d 58, 58-59, 428 N.E.2d 413 (1981); *State v. Jackson*, 64 Ohio St.2d 107, 413 N.E.2d 819 (1980), syllabus. And in this appeal, he has the duty to ensure that the record on appeal includes those portions of the transcript of the proceedings that are necessary for our determination of the challenges advanced on appeal to the denial of those claims. See *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980); see *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 19, 520 N.E.2d 564 (1988); App.R. 9(B), 10(A) and 12(A)(2). But the record before us does not include the exhibits admitted at trial, leaving us without a complete transcript of the proceedings necessary to our resolution of those challenges. See App.R. 9(A)(1) and 9(B)(6)(g). In the absence from the record on appeal of a complete transcript of the proceedings, we cannot say that the common pleas court erred in determining that Dabney was not entitled to relief based on those claims. See *State v. Hendrix*, 1st Dist. Hamilton No. C-160887, 2018-Ohio-3754, ¶ 6-10.

We, therefore, hold that the common pleas court properly denied Dabney's postconviction petition without an evidentiary hearing. Accordingly, we 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.

MOCK, P.J., MYERS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on September 28, 2018
per order of the court _____.
Presiding Judge