

MCCLELLAN, APPELLANT, v. MACK, WARDEN, APPELLEE.

[Cite as *McClellan v. Mack*, 129 Ohio St.3d 504, 2011-Ohio-4216.]

Habeas corpus — Res judicata does not deprive a court of jurisdiction and hence is not a basis for extraordinary relief — Dismissal of petition affirmed.

(No. 2011-0546 — Submitted August 8, 2011 — Decided September 1, 2011.)

APPEAL from the Court of Appeals for Montgomery County, No. 24326.

Per Curiam.

{¶ 1} We affirm the judgment dismissing the petition of appellant, James McClellan, for a writ of habeas corpus to compel his immediate release from prison.

{¶ 2} McClellan’s claim that res judicata barred the relitigation of the propriety of a traffic stop that led to a search of his vehicle and the seizure of evidence used by the state to prosecute him is not cognizable in habeas corpus. “[R]es judicata is not an appropriate basis for extraordinary relief, because ‘res judicata does not divest a trial court of jurisdiction to decide its applicability, and the denial of this defense by the trial court can be adequately challenged by post-judgment appeal.’ ” *Smith v. Voorhies*, 119 Ohio St.3d 345, 2008-Ohio-4479, 894 N.E.2d 44, ¶ 9, quoting *State ex rel. Nationwide Mut. Ins. Co. v. Henson*, 96 Ohio St.3d 33, 2002-Ohio-2851, 770 N.E.2d 580, ¶ 11.

{¶ 3} Moreover, McClellan could have raised this claim in his direct appeal. He did not. *State v. McClellan*, Allen App. No. 1-09-21, 2010-Ohio-314. Thus, res judicata bars raising it here. *Smith* at ¶ 11. And the mere fact that he has already unsuccessfully invoked his appellate remedy does not thereby entitle him to the requested extraordinary relief in habeas corpus. *Everett v. Eberlin*, 114 Ohio St.3d 199, 2007-Ohio-3832, 870 N.E.2d 1190, ¶ 6.

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{¶ 4} Therefore, the court of appeals correctly dismissed McClellan's petition for a writ of habeas corpus, and we affirm that judgment.

Judgment affirmed.

O'CONNOR, C.J., and PFEIFER, LUNDBERG STRATTON, O'DONNELL, LANZINGER, CUPP, and MCGEE BROWN, JJ., concur.

James McClellan, pro se.

Michael DeWine, Attorney General, and Gene D. Park, Assistant Attorney General, for appellee.
