2016 IL App (3d) 140206-U

Order filed July 5, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0206 Circuit Nos. 85-CF-1, 85-CF-264
JAMES L. TREECE,	)	The Honorable Kathy Bradshaw-Elliott, Judge, Presiding.
Defendant-Appellant.	)	

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court properly denied defendant's fourth motion for forensic and deoxyribonucleic acid (DNA) testing and ordered defendant to pay filing fees and court costs, where his first motion for testing filed 15 years earlier was denied with prejudice because testing would not produce evidence materially relevant to his claim of actual innocence.

¶ 2 In 1985, defendant was convicted of murder, armed robbery, aggravated criminal sexual assault, home invasion and aggravated kidnapping. In 1998, defendant filed his first motion for DNA testing, which the trial court struck as "insufficient." Defendant then filed a motion to

reconsider, which the court treated as a new motion for DNA testing. The trial court denied that motion with prejudice. In 2005 and 2011, defendant again filed motions for DNA testing, which the trial court dismissed. In 2013, defendant filed his fourth motion for DNA and forensic testing. The trial court denied defendant's motion and assessed him filing fees and court costs for his "frivolous" motion. Defendant appeals, arguing that the trial court erred in denying his motion and assessing him fees and costs. We affirm.

¶ 3 FACTS

¶ 4 On December 31, 1984, the body of 15-year-old Jessica Hosick was found in front of a tree in a wooded area in Golman in Kankakee County. Hosick was wearing no clothing other than shoes and socks. Defendant James Treece and William Braid were charged with murder, armed robbery, aggravated criminal sexual assault, home invasion, aggravated kidnapping and conspiracy in connection with Hosick's death.

¶ 5 Braid testified at defendant's trial that he and defendant were at defendant's apartment in Watseka on the evening of December 26, 1984. Hosick was in the apartment next to defendant's. According to Braid, defendant retrieved a gun, went next door and forced Hosick at gunpoint to come into his apartment. Once in defendant's apartment, defendant made Hosick take off her clothes and directed Braid to tie her to his bed with socks and gag her. Defendant asked who should have sex with Hosick first, and Braid volunteered. Defendant then left the room, and Braid was in the bedroom alone with Hosick. When Braid announced that he was finished, defendant went in the bedroom alone with Hosick. After a while, defendant called for Braid to return to the bedroom. When Braid returned to the bedroom, defendant was putting on his clothes.

¶ 6 After that, the men forced Hosick into Braid's truck. Braid drove west on Route 24 until defendant told him to turn off onto a road that led to a wooded area. In the wooded area, defendant ordered Hosick to take off her pants and underwear. At defendant's suggestion, Braid had anal intercourse with Hosick. Defendant ordered Hosick to remove the rest of her clothes, except her socks and shoes, and walk toward a tree. Defendant then shot Hosick several times. After that, the men got back in Braid's truck, and Braid drove to a pizza parlor.

¶ 7 The State played an audiotape of Braid's confession to police, which was largely consistent with Braid's trial testimony. Testimony at trial showed that Hosick and her mother lived in the apartment next door to the apartment where defendant and his father lived. Hosick's mother was out of town on December 26, 1984, so a couple was looking after her. The couple dropped off Hosick at her apartment around 6:45 p.m. When they returned around 9:15 p.m., the apartment was dark, and no one responded when they knocked.

¶ 8 On December 29, 1984, defendant took a bus to Big Springs, Texas. Defendant was apprehended by authorities in Big Springs after defendant's body was found. Defendant's luggage was taken, and clothing therein was analyzed. Police also confiscated bedding and other items from defendant's bedroom.

¶ 9 An evidence technician removed three bullet slugs from the tree near where Hosick's body was found. A bullet was also taken from Hosick's body. The bullets taken from the tree and Hosick's body matched a gun taken from defendant's apartment that belonged to defendant's father. The pathologist who performed Hosick's autopsy found multiple bullet wounds, as well as trauma to Hosick's anus and vagina.

¶ 10 A forensic scientist testified that hair consistent with defendant's was found on Hosick's shirt and underwear, and hair consistent with Hosick's was found on clothes in defendant's

suitcases, as well as a bed sheet, blanket and pillow from defendant's apartment. Testing on semen from Hosick's anus, vagina, underwear and a blanket from defendant's apartment did not exclude defendant or any other male. Fibers found on Hosick's socks were consistent with those of a blanket found in defendant's bedroom.

¶ 11 Defendant testified that he was ill on December 26, 1984. He was in his apartment sick and vomiting. Braid came over around 5:00 p.m., and the two of them "hung out." Braid left defendant's apartment at some point that evening but came back later, and he and defendant went to a pizza parlor. A few days later, Braid told him that he took a gun from defendant's apartment, took the girl next door to a field and shot her after having sex with her. He told defendant that he would kill him if he told anyone. Defendant then boarded a bus to Big Springs. He denied any involvement in Braid's crimes.

¶ 12 The jury found defendant guilty of all charges. He was sentenced to natural life in prison for murder and extended, concurrent sentences of 30 years for aggravated kidnapping and 60 years each for the remaining offenses. His conspiracy conviction was vacated. On direct appeal, the court affirmed defendant's convictions and his natural life sentence for murder but reduced the sentences on his remaining convictions. *People v. Treece*, 159 Ill. App. 3d 397 (1987).

¶ 13 In 1998, defendant filed his first motion for deoxyribonucleic acid (DNA) testing, pursuant to section 116-3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/116-3 (West 1998)), seeking DNA testing of "material collected" and asserting that "[t]est results are relevant to an assertion of actual innocence." The trial court struck the motion as "insufficient on its face."

¶ 14 Defendant then filed a motion to reconsider, which the court construed "as a more detailed and elaborate motion to allow DNA testing." In that motion, defendant asserted that

DNA testing would prove that he did not rape Hosick and that all of Braid's testimony was false, thus supporting his claim of innocence. The trial court first noted the legal standard: "The new section allows for DNA testing when 'result of the testing has the scientific potential to produce, non-cumulative evidence relevant to the Defendant's assertion to actual innocence.' (725 ILCS 5/116-3(c)(1))[.]" The court concluded that the testing requested by defendant would not produce evidence materially relevant to defendant's claim of actual innocence because the results would not refute any testimony at trial or show that someone other than defendant killed the victim. The court issued an order denying defendant's motion with prejudice in July 1998.

¶ 15 In 2006, defendant filed a second motion for DNA testing, arguing that it could exonerate him of the sexual assault conviction. The State moved to dismiss the motion. The court denied the motion pursuant to the doctrine of *res judicata*. Defendant appealed. Defendant's appointed appellate counsel filed a motion, in accordance with *Pennsylvania v. Finley*, 481 U.S. 551, 107 S. Ct. 1990 (1987), seeking to withdraw as counsel. *People v. Treece*, No. 3-06-0801 (2008) (unpublished order under Supreme Court Rule 23). We affirmed the judgment of the circuit court and allowed defendant's appellate counsel to withdraw, concluding "that the motion for DNA testing was properly dismissed and that there are no arguable errors to be considered on appeal." *Id*.

¶ 16 In 2011, defendant filed a third motion for testing, pursuant to section 116-3 of the Code, seeking DNA testing of "the physical evidence collected from the parties." The court dismissed the motion *sua sponte*, finding that defendant failed to show that the chain of custody was maintained or that identity was an issue at trial. The court also ruled that the claim was barred by *res judicata* and was frivolous and deducted filing fees and court costs from defendant's prisoner trust account. Defendant did not appeal.

¶ 17 In 2013, defendant filed his fourth motion for forensic testing, pursuant to section 116-3 of the Code. He requested fingerprint, Integrated Ballistics Identification System and DNA testing of "all weapons, spent projectiles, bullets, blood, hair, seminal fluid, salvia [sic], and all other possible evidence recovered from the crime scenes." He identified 20 pieces of evidence he wanted tested, including hairs found on Hosick's clothing, seminal fluid from the rape kit, hairs found on a bed sheet, blanket and pillow case from his apartment, and hairs found on his clothing. In his motion, defendant claimed "innocence to the sexual assault and other crimes" and asserted that Braid "plainly lied to the authorities about the crime and this Defendant's involvement."

¶ 18 The trial court denied defendant's motion, finding that defendant's allegations concerning chain of custody were conclusory and that identity was not an issue at trial. The court also found that defendant's motion was barred by *res judicata*. The court entered an order finding that defendant's motion was frivolous in that it was "presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation as it is the 4th petition" and assessed defendant $75 in filing fees and court costs.

¶ 19 ANALYSIS

¶ 20 I. DNA and Forensic Testing

¶ 21 In 1998, the Illinois legislature enacted section 116-3 of the Code. When it was enacted, it stated as follows:

> "(a) A defendant may make a motion before the trial court that entered the judgment of conviction in his or her case for the performance of fingerprint or forensic DNA testing on evidence that was secured in relation to the trial which resulted in his or her conviction, but which was not subject to the testing which is

now requested because the technology for the testing was not available at the time of trial. Reasonable notice of the motion shall be served upon the State.

(b) The defendant must present a prima facie case that:

(1) identity was the issue in the trial which resulted in his or her conviction; and

(2) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.

(c) The trial court shall allow the testing under reasonable conditions designed to protect the State's interests in the integrity of the evidence and the testing process upon a determination that:

(1) the result of the testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence;

(2) the testing requested employs a scientific method generally accepted within the relevant scientific community." 725 ILCS 5/116-3 (West 1998).

¶ 22 Our court was the first to interpret the language of subsection (c)(1) of section 116-3. See *People v. Savory,* 309 Ill. App. 3d 408, 413-15 (1999). In our opinion, issued in December 1999, we held: "[I]n using the term 'actual innocence,' the legislature intended to limit the scope of section 116-3, allowing for scientific testing only where it has the potential to exonerate a defendant." *Id*. at 414-15. The Fourth District agreed. See *People v. Stevens*, 315 Ill. App. 3d 781, 785 (2000). The Second District disagreed, ruling that section 116-3 "is not limited to those

situations where additional scientific testing would result in total vindication." *People v. Hockenberry*, 316 Ill. App. 3d 752, 758 (2000). The Fifth District agreed, stating that section 116-3 required only a showing that the result of testing might be materially relevant. See *People v. Rokita*, 316 Ill. App. 3d 292, 300-02 (2000).

¶ 23 In 2001, the supreme court resolved this split of authority and issued a holding contrary to our 1999 decision, stating: "[S]ection 116-3 is not limited to situations in which scientific testing of a certain piece of evidence would completely exonerate a defendant." *People v. Savory*, 197 Ill. 2d 203, 214 (2001). In 2003, the legislature amended subsection (c)(1) to state: "the result of the testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence *even though the results may not completely exonerate the defendant*." (Emphasis added.) 725 ILCS 5/116-3 (2004). This amendment harmonized the statute's language with the supreme court's decision in *Savory*.

¶ 24 Successive section 116-3 motions are not impermissible. *People v. Barker*, 403 Ill. App. 3d 515, 522 (2010). However, *res judicata* will bar a successive section 116-3 motion if the same issue is raised in both motions. *Id*. at 522-23*; People v. Patterson*, 2012 IL App (4th) 090656, ¶ 24*; People v. Luczak*, 374 Ill. App. 3d 172, 178 (2007).

¶ 25 *Res judicata* is an equitable doctrine that bars the relitigation of issues that were raised and adjudicated in a prior proceeding. *People v. Kines*, 2015 IL App (2d) 140518, ¶ 20. "*Res judicata* bars not only what was actually decided in the first action but also whatever could have been decided." *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008). The purpose of *res judicata* is to make sure that a case is put to rest once the litigation has ended and the controversy has been decided on its merits. *Kines*, 2015 IL App (2d) 140518, ¶ 20. Whether a claim is barred by *res judicata* is a question of law that we review *de novo. Id*.

¶ 26 For *res judicata* to apply, three requirements must be met: (1) a final judgment on the merits rendered by a court of competent jurisdiction, (2) involving the same parties, and (3) involving the same cause of action. *Id.* ¶ 21. *Res judicata* is an equitable doctrine that may be relaxed where justice requires. *Id*.

¶ 27 Here, before filing his fourth motion for testing in 2013, defendant filed three prior section 116-3 motions, all seeking DNA analysis of evidence from his trial. Defendant's first motion was denied with prejudice. Denial of a defendant's motion for DNA testing under section 116-3 is a final judgment. *People v. Savory*, 197 Ill. 2d 203, 210 (2001). Defendant's fourth section 116-3 motion, filed 15 years after his first motion was denied, raised the same issue as the first motion: to seek DNA testing of evidence to support his claim of innocence. All of the requirements necessary for the application of *res judicata* were met; the trial court properly dismissed defendant's motion on *res judicata* grounds. See *Patterson*, 2012 IL App (4th) 090656, ¶ 24; *Barker*, 403 Ill. App. 3d at 522-23; *Luczak*, 374 Ill. App. 3d at 178.

¶ 28 Defendant, however, argues that we should not apply *res judicata* because it would be unjust to do so. In support of this argument, he relies on *People v. Kines*, 2015 IL App (2d) 140518 (2015), where the court refused to apply *res judicata* because the statute that the court relied on to dismiss the defendant's original complaint had been substantially amended and the new version of the statute would not require dismissal. See *id*. ¶¶ 22-24. Defendant argues that the same is true here because the legislature amended subsection (c)(2) of section 116-3 after the trial court denied his motion for testing in 1998.

¶ 29 We disagree with defendant's position. The legislature's 2003 amendment to subsection (c)(2) was not a substantial change. Instead, the amendment merely clarified the existing statute, as the supreme court interpreted it, making clear that a motion for testing should be allowed even

if the test results would not "*completely exonerate the defendant*." See *Savory*, 197 Ill. 2d 203; 725 ILCS 5/116-3(c)(2) (West 2004). Nothing in the language of the 1998 statute required that testing be allowed only where it had the potential to exonerate a defendant. See 725 ILCS 5/116-3 (West 2008). Rather, that was a requirement that was read into the statute by appellate courts beginning in 1999. See *Savory*, 309 Ill. App. 3d at 414-15; *Stevens*, 315 Ill. App. 3d at 785.

¶ 30 Here, the trial court denied defendant's motion for testing in July 1998, almost a year-and-a-half before this court ruled that testing must have the potential to completely exonerate a defendant. See *Savory*, 309 Ill. App. 3d at 414-15. In its order denying defendant's motion, the trial court twice cited the language of subsection (c)(2): "the result of the testing has the scientific potential to produce, non-cumulative evidence relevant to the Defendant's assertion to actual innocence." 725 ILCS 5/1116-3(c)(2) (West 2012). The court used that standard in analyzing defendant's motion and denied the motion based on that standard. The court never stated that defendant had to show that testing could exonerate him completely because that requirement was not announced by this appellate court until over a year later. See *Savory*, 309 Ill. App. at 735-36. Because the trial court did not require defendant to prove that testing had the potential to completely exonerate him, applying *res judicata* does not lead to an unjust result.

¶ 31 II. Frivolous Filing

¶ 32 Section 22-105 of the Illinois Code of Civil Procedure authorizes courts to assess filing fees and court costs against incarcerated prisoners for frivolous postconviction filings. 735 ILCS 5/22-105 (West 2012). A filing is frivolous if it "is being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." 735 ILCS 5/22-105(b)(2) (West 2012). A defendant who files a pleading that contains claims

that have previously been rejected as frivolous may be held responsible for filing fees and court costs pursuant to section 22-105. See *People v. Shotts*, 2015 IL App (4th) 130695, ¶ 75.

¶ 33 Here, the trial court found that defendant's 2013 motion for DNA testing was brought for an improper purpose since it was the fourth motion for testing defendant had filed and contained many of the same claims as his previous motions, which had all been denied or dismissed. It included the same claims as his third motion for testing, which the trial court ruled was frivolous. Pursuant to section 22-105 of the Code of Civil Procedure, the court was authorized to assess fees and costs against defendant. See 735 ILCS 5/22-105(b)(2) (West 2012); *Shotts*, 2015 IL App (4th) 130695, ¶ 75. We find no error.

¶ 34 CONCLUSION

¶ 35 The judgment of the circuit court of Kankakee County is affirmed.

¶ 36 Affirmed.