

FILED

December 13, 2016
Carla Bender
4th District Appellate
Court, IL

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2016 IL App (4th) 160351-U

NO. 4-16-0351

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

EDWARD LOPEZ,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Logan County
KESS ROBERSON, Warden, Lincoln Correctional)	No. 15MR32
Center,)	
Defendant-Appellee.)	Honorable
)	William Gordan Workman,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, finding the circuit court did not err in dismissing plaintiff’s complaint for *habeas corpus* and *mandamus* relief. This court also ordered plaintiff to show cause within 30 days why sanctions should not be entered for his appeal.
- ¶ 2 In March 1999, a jury found plaintiff, Edward Lopez, guilty of first degree murder and aggravated battery with a firearm. In April 1999, the circuit court of Cook County sentenced him to prison. In March 2015, plaintiff filed a petition for *habeas corpus* and *mandamus* relief against defendant, Kess Roberson, the warden of Lincoln Correctional Center, in the Logan County circuit court. In June 2015, defendant filed a motion to dismiss, which the court granted in April 2016.
- ¶ 3 On appeal, plaintiff argues the circuit court erred in dismissing his petition for *habeas* and *mandamus* relief. We affirm the circuit court’s ruling and order plaintiff to show

cause why he should not be sanctioned.

¶ 4

I. BACKGROUND

¶ 5 In March 1999, a jury found plaintiff guilty of first degree murder and aggravated battery with a firearm in Cook County. The circuit court sentenced him to consecutive terms of 35 years in prison for the murder conviction and 7 years in prison for the aggravated battery conviction.

¶ 6 In January 2014, plaintiff filed a petition for *mandamus* in the circuit court of Cook County, arguing his consecutive sentences were unconstitutional. In July 2014, the circuit court denied relief, finding the claim was barred by *res judicata* as plaintiff had previously argued in his direct appeal that the court had erred in sentencing him to consecutive sentences and the imposition of consecutive sentences was unconstitutional.

¶ 7 In March 2015, plaintiff filed a *pro se* “petition for state *habeas corpus/mandamus/relief from judgment*” in the circuit court of Logan County. Plaintiff cited section 10-101 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/10-101 (West 2014)) as the primary basis for his desired relief. Plaintiff claimed his seven-year sentence for aggravated battery with a firearm should not have been imposed as a consecutive sentence and was void.

¶ 8 In June 2015, defendant filed a motion to dismiss pursuant to section 2-615 of the Procedure Code (735 ILCS 5/2-615 (West 2014)), arguing plaintiff’s complaint failed to state a ground entitling him to *habeas* relief. In his motion, defendant contended the Cook County circuit court had jurisdiction over plaintiff and his case, his sentence had not expired, and no postconviction event entitled him to *habeas* relief.

¶ 9 In April 2016, the Logan County circuit court, construing the complaint as a

combined *habeas* and *mandamus* action, granted defendant's motion to dismiss. This appeal followed.

¶ 10

II. ANALYSIS

¶ 11 Plaintiff argues the trial court erred in granting defendant's motion to dismiss his complaint for *habeas* and *mandamus* relief. We find plaintiff's claim barred by the doctrine of *res judicata*.

¶ 12

We review an order granting a section 2-615 motion to dismiss *de novo*. *Beacham v. Walker*, 231 Ill. 2d 51, 57, 896 N.E.2d 327, 331 (2008). Moreover, an appellate court may affirm the circuit court's judgment on any basis contained in the record. *Beacham*, 231 Ill. 2d at 60-61, 896 N.E.2d at 333.

“The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction acts as an absolute bar to a subsequent action between the same parties or their privies involving the same claim, demand, or cause of action. The bar extends not only to all matters that were actually decided but also to those matters that could have been decided in the prior action.” *Wilson v. Edward Hospital*, 2012 IL 112898, ¶ 9, 981 N.E.2d 971.

See also *Johnson v. Williams*, 2016 IL App (3d) 150824, ¶ 8, 60 N.E.3d 134 (stating “[t]he doctrine of *res judicata* bars criminal defendants from reasserting issues already raised on direct appeal”). “The underlying policy of *res judicata* is to promote judicial economy by preventing repetitive litigation and to protect a defendant from the harassment of relitigating essentially the same claim.” *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 21, 53 N.E.3d 1.

¶ 13 In the case *sub judice*, the record indicates plaintiff has collaterally attacked his consecutive sentences on numerous occasions and his claim has been found to be without merit. We note a *habeas* petition may properly attack a void order. See *Beacham*, 231 Ill. 2d at 58-59, 896 N.E.2d at 332. However, courts have already determined the imposition of consecutive sentences was proper in plaintiff’s case. Thus, *res judicata* bars a repeated review of the same claim, and the circuit court did not err in dismissing plaintiff’s complaint.

¶ 14 We note the Attorney General suggests this court should sanction plaintiff, claiming his appeal is frivolous. Under Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994), this court can impose sanctions on a party when the party’s appeal is frivolous or not taken in good faith. Frivolous appeals are those brought “without merit and [with] no chance of success.” Ill. S. Ct. R. 375(b), Committee Comments (adopted Aug. 1, 1989). “Frivolous litigation wastes time, money, and resources that could be better spent addressing potentially meritorious claims filed by good-faith litigants.” *People v. Austin*, 2014 IL App (4th) 140408, ¶ 23, 23 N.E.3d 615.

¶ 15 We find plaintiff’s appeal appears to be frivolous based upon the doctrine of *res judicata*. Plaintiff’s consecutive sentence claim has been denied on numerous occasions, and he has continued to assert the claim even after being sanctioned for doing so. Accordingly, we order plaintiff to show cause within 30 days why sanctions should not be entered against him under Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994).

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we affirm the circuit court’s judgment.

¶ 18 Affirmed; rule to show cause issued.