

2018 IL App (2d) 160714-U
No. 2-16-0714
Order filed March 19, 2018

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 95-CF-1385
)	
PATRICK L. JOHNSON)	Honorable
)	Susan Clancy Boles,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant’s motion to compel the disclosure of grand jury information, as his underlying claim had been repeatedly rejected and thus was barred by *res judicata*.

¶ 2 Defendant, Patrick L. Johnson, appeals the trial court’s denial of his motion to compel disclosure of grand jury information. We affirm because the matter is barred by *res judicata*.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with first-degree murder in connection with the 1995 shooting death of Sheldon Raider. In June 1997, defendant pleaded guilty, and the trial court imposed an

extended-term sentence of 78 years' incarceration. Following his direct appeal, defendant filed numerous unsuccessful collateral attacks on his conviction and sentence.

¶ 5 In June 2008, defendant filed a petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)), arguing in part that the grand jury that indicted him was not properly sworn before it returned the indictment. *People v. Johnson*, No. 2-09-0402 (2010) (unpublished order under Illinois Supreme Court Rule 23). We affirmed, holding that, even if defendant was correct in his claim of error, it did not render his conviction void, because any defect in the charging instrument did not deprive the trial court of jurisdiction. *Id.* at 4.

¶ 6 Defendant later sought leave to file a successive petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2012)), arguing again in part that the grand jury was not properly sworn. Noting the previous appeal of the issue, we held that the matter was barred by *res judicata*. *People v. Johnson*, 2015 IL App (2d) 140388, ¶ 6. We further stated that we saw no reason to deviate from our previous determination, stating that the failure to swear the grand jury does not divest the trial court of jurisdiction to enter a criminal conviction. *Id.*

¶ 7 In April 2015, defendant filed another section 2-1401 petition, which was denied. On appeal, he yet again argued that the grand jury was not properly sworn. Noting that defendant had raised the issue in two previous appeals and in numerous collateral attacks at the trial level, we held that the matter was barred by *res judicata*. *People v. Johnson*, 2016 IL App (2d) 150586-U, ¶ 14. We stressed that the trial court had jurisdiction and that defendant's conviction was valid whether or not the grand jury was properly sworn. *Id.* ¶ 16. We also noted that, even if we assumed that *res judicata* did not apply, we would not presume that the grand jury was unsworn based on the evidence that defendant had provided. *Id.* ¶¶ 17, 19.

¶ 8 In February, June, and July of 2016, defendant filed identical motions to compel disclosure of grand jury information. He alleged that the grand jury was not sworn when it indicted him and that he needed the information to initiate a proper action, in light of our statement in his previous appeal that we would not presume that the grand jury was unsworn based on the evidence that he had provided. See 725 ILCS 5/112-6(c)(3) (West 2016). The trial court denied the motion, finding that it was barred by *res judicata*. Defendant appeals.

¶ 9

II. ANALYSIS

¶ 10 Defendant contends that the trial court erred by failing to follow a three-part test to determine whether to compel disclosure of the grand jury information. See *Board of Education, Community Unit School District No. 200 Du Page County v. Verisario*, 143 Ill App. 3d 1000, 1009-10 (1986) (holding that, to obtain disclosure, the defendant must establish a particularized need for the disclosure and listing a three-part test). The State contends that the matter is *res judicata* and asks for sanctions based on defendant's frivolous appeal.

¶ 11 “The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the parties or their privies on the same cause of action.’” *Johnson*, 2015 IL App (2d) 140388, ¶ 6 (quoting *People v. Carroccia*, 352 Ill. App. 3d 1114, 1123 (2004)). It bars relitigation of “any issues which have previously been decided by a reviewing court.’” *Id.* (quoting *People v. Whitfield*, 217 Ill. 2d 177, 183 (2005)).

¶ 12 Here, we have repeatedly held that, even if the grand jury was unsworn, defendant could not obtain relief and that his arguments to the contrary were barred by *res judicata*. Defendant contends that his current claim is not barred, because whether he could compel disclosure of grand jury information has not previously been decided. However, this ignores that his purpose

for seeking the information is to pursue the same issue that he has raised time and time again. Indeed, because defendant cannot obtain relief regardless of whether the grand jury was sworn, he cannot show, and has not alleged, a valid particularized need for disclosure of the information.

¶ 13 Because defendant filed this meritless motion after raising the issue several times before, the State, citing a case where defendant raised the same grand jury issue multiple times in the Third District, asks that we award sanctions against him under Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994). See *Johnson v. Williams*, 2016 IL App (3d) 150824.

¶ 14 Rule 375(b) allows us to impose an appropriate sanction if the appeal is frivolous, not taken in good faith, or taken for an improper purpose, such as to harass or cause unnecessary delay or needless increase in litigation costs. Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). The purpose of Rule 375(b) is to condemn and punish the abusive conduct of litigants. *Gabuka v. Kurtz*, 2015 IL App (2d) 140252, ¶ 26. Imposition of sanctions under Rule 375(b) is discretionary. *Id.* The rule provides that appropriate sanctions “may include an order to pay to the other party or parties damages, the reasonable costs of the appeal or other action, and any other expenses necessarily incurred by the filing of the appeal or other action, including reasonable attorney fees.” Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). The committee comments to the rule also make clear that the penalties for violating Rule 375(b) may include a fine: “Under paragraph (b), a penal fine may be imposed if the conduct in a particular case also constitutes a violation of the civil appeals rules as set forth in paragraph (a) above.” Ill. S. Ct. R. 375(b), Committee Comments (adopted Aug. 1, 1989).

¶ 15 In the Third District case, the court ordered defendant to show cause as to why sanctions should not be entered against him. *Johnson*, 2016 IL App (3d) 150824, ¶ 12. The court further reminded the trial court of its statutory authority to collect funds from defendant’s Department of

Corrections trust fund account in order to pay for the cost of the litigation when he files a frivolous pleading or motion. *Id.* ¶ 13.

¶ 16 Here, defendant has raised the same issue repeatedly, both in this district and in the Third District. He has been told numerous times that the issue is *res judicata*. At this time, however, we will not impose sanctions but admonish defendant that further pursuit of this issue may very well result in sanctions against him.¹

¶ 17 Citing *Williams v. Commissary Department of Illinois Department of Corrections*, 407 Ill. App. 3d 1135, 1138 (2011), the State also suggests that we direct the clerk of the court to disregard any new appeals from defendant. There, the court ordered the defendant to show cause as to why sanctions should not be imposed and directed the clerk of the court to disregard any new appeals until the defendant responded to the order and the court determined what action to take. However, in *Williams*, the defendant was filing a number of successive appeals within a short time frame. That does not appear to be the case here. Accordingly, we decline to limit the filing of appeals.

¶ 18 III. CONCLUSION

¶ 19 Defendant's action was barred by *res judicata*. Accordingly, the judgment of the circuit court of Kane County is affirmed.

¶ 20 Affirmed.

¹ We also remind the trial court of its authority to collect costs from defendant's Department of Corrections trust fund account in order to pay for the cost of the litigation when he files a frivolous pleading or motion.