NOTICE
Decision filed 01/28/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0599

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

WESLEY ROBINSON, Inmate No. A-80215,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Randolph County.
	)	
v.	)	No. 09-MR-59
	)	
DONALD GAETZ, Warden, and WILLIAM A. SCHUWERK, JR., Judge,	)	Honorable
	)	Richard A. Brown,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Donovan and Welch concurred in the judgment.

RULE 23 ORDER

Held: Where the plaintiff attempts to raise a previously adjudicated issue, forfeiture by the parties is not a limitation on the court but the plaintiff is collaterally estopped from relitigating the issue.

Wesley Robinson, inmate No. A-80215 in the Department of Corrections, appeals *pro se* from the dismissal of his complaint for *mandamus* relief. He asserts that the defendants had a duty to release him from prison because he is being held on a void judgment, that sentencing him based on a prior conviction is considered double jeopardy, and that his *habeas corpus* complaint should not have been dismissed. He asks this court to (1) vacate its earlier ruling that affirmed his enhanced sentence and the dismissal of his *habeas corpus* complaint, (2) reverse the circuit court's dismissal of his *mandamus* complaint, (3) vacate his conviction and natural-life sentence, (4) order the defendants to release him from prison immediately without parole, and (5) compensate him $50,000 per year for each year he was held in prison unlawfully. The defendants argue that the

complaint was barred by *laches* and collateral estoppel and that the complaint failed to state a claim for *mandamus* relief. For the following reasons, we affirm.

BACKGROUND

The background of this case has been reviewed numerous times by this court, and thus, we recall the facts as follows and add only the necessary procedural facts for a determination of the instant appeal.

> "The plaintiff was convicted in Cook County case No. 81-720102 of murder and attempted armed robbery. He was sentenced to an extended prison term of 60 years for murder and a term of 15 years in prison for attempted armed robbery to be served concurrently with the murder sentence. On appeal, his convictions were affirmed and his sentence for murder was reduced to 40 years in prison, the maximum nonextended-term sentence. *People v. Thomas*, 139 Ill. App. 3d 163, 486 N.E.2d 1362 (1985).
>
> On October 27, 1988, when the plaintiff was incarcerated at Stateville Correctional Center, he bludgeoned Suon Troeung, a Stateville Correctional Center commissary employee, to death with an iron bar and stole cigarettes from the commissary. The plaintiff was found guilty by a Will County jury of first-degree murder, armed robbery, and theft. The cause then proceeded to a death penalty hearing. Although the jury determined that he was eligible for the death penalty because of the statutory aggravating factor that the victim was an employee of a Department facility who was killed in the course of performing his official duties, it was unable to conclude that no mitigating factors existed. The death penalty was therefore not a sentencing option. The court sentenced the plaintiff to a term of natural-life imprisonment based on his prior murder conviction, not the victim's occupation. The appellate court affirmed his convictions but remanded the cause to

the trial court for further proceedings on his *pro se* posttrial motion, in which he had raised issues of the incompetence of trial counsel. *People v. Robinson*, 226 Ill. App. 3d 649, 589 N.E.2d 1093 (1992) (*Robinson I*). The supreme court affirmed the appellate court's decision and remanded the cause to the trial court for further posttrial proceedings. *People v. Robinson*, 157 Ill. 2d 68, 623 N.E.2d 352 (1993) (*Robinson II*). On remand, the plaintiff refiled his posttrial motion and requested the appointment of counsel. The Third District Appellate Court affirmed the trial court's denial of the plaintiff's request for counsel and its denial of his posttrial motion. *People v. Robinson*, No. 3-94-0316 (May 16, 1996) (unpublished order pursuant to Supreme Court Rule 23 (166 Ill. 2d R. 23)) (*Robinson III*). Later, the appellate court affirmed the dismissal of his postconviction petition. *People v. Robinson*, No. 3-96-1084 (July 10, 1998) (unpublished Summary order pursuant to Supreme Court Rule 23(c)(2) (166 Ill. 2d R. 23(c)(2)) (*Robinson IV*).

On November 6, 2006, the plaintiff filed a *pro se* complaint for *habeas corpus* relief in Randolph County, in which he alleged that his conviction for murder and his natural-life sentence were void. He asserted that (1) the circuit court of Will County lacked jurisdiction over his case because the warrant for his arrest had been signed by the clerk of the court, rather than a judge, in violation of section 107-9(d) of the Code of Criminal Procedure of 1963 (725 ILCS 5/107-9(d) (West 2006)), (2) his sentence was void because he had been impermissibly convicted of a greater crime than that for which he had been indicted and he had been given a more stringent sentence than was authorized for the crime for which he had been indicted, and (3) the imposition of a natural[-]life sentence constituted a violation of the supreme court's decision in *Blakely v. Washington*, 542 U.S. 296, 159 L. Ed. 2d 403, 124 S. Ct. 2531 (2004), which relied upon *Apprendi v. New Jersey*, 530 U.S. 466,

147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000), and thus he was entitled to an immediate release because he had served the maximum nonextended term to which he could have been sentenced for the crime for which he was indicted.

On December 6, 2006, the defendant moved to dismiss the complaint for a failure to state a cause of action for *habeas corpus* relief. On December 26, 2006, the plaintiff filed a response to the motion, and the court granted the defendant's motion." *Robinson v. Hulick*, No. 5-07-0236, order at 1-3 (July 11, 2008) (unpublished order pursuant to Supreme Court Rule 23 (eff. July 1, 1994)) (*Robinson VI*).

In *Robinson VI*, the dismissal of the plaintiff's *habeas corpus* complaint for the failure to state a cause of action was affirmed on appeal. The appellate court confirmed that the plaintiff's sentencing argument was subject to *res judicata* based on *People v. Robinson*, No. 3-01-0651 (Mar. 13, 2003) (unpublished order pursuant to Supreme Court Rule 23) (*Robinson V*), but that even without *res judicata*, his sentence was based on his prior murder conviction, which is statutorily authorized.

On July 6, 2009, the plaintiff filed a complaint for a writ of *mandamus* against Judge Schuwerk and Warden Gaetz, in which he argued that he should be released immediately and compensated with money damages because he was being held on a void judgment. On August 12, 2009, Judge Schuwerk filed a motion to dismiss, which the court granted. On September 14, 2009, Warden Gaetz filed a motion to dismiss for a failure to state a cause of action. The court granted this motion on September 22, 2009. On September 28, 2009, Warden Gaetz filed an amended motion to dismiss that included the affirmative defenses of *laches* and collateral estoppel. The plaintiff filed a posttrial motion, which was denied on October 26, 2009. The plaintiff filed this timely appeal.

STANDARD OF REVIEW

The dismissal of a complaint pursuant to section 2-615 of the Code of Civil

Procedure (735 ILCS 5/2-615 (West 2008)) is subject to *de novo* review. *Turner-El v. West*, 349 Ill. App. 3d 475, 480 (2004). All well-pleaded facts and reasonable inferences from the complaint are taken as true, but conclusions, unsupported by facts, will not be accepted as true. *Id.* at 479. Where the dismissal of a *mandamus* complaint is appropriate as a matter of law, we may affirm the dismissal on any basis that is supported by the record. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 434 (2007).

ANALYSIS

On appeal, the plaintiff argues that his conviction was a void judgment and that since it was based on his prior conviction, it was a violation of double-jeopardy principles. He argues that the defendant Schuwerk was the judge presiding over his *habeas corpus* hearing where the plaintiff was being held unlawfully by defendant Gaetz. He asserts that this court was wrong in affirming the denial of his *habeas corpus* complaint in *Robinson VI*. The plaintiff also argues that the defendants had a duty to release him. He argues that even if a *mandamus* proceeding was the wrong vehicle to attack his judgment, he should have been allowed to amend his complaint. He prays that this court will compel the defendants to release him and compensate him for the time he has been unlawfully held.

In response, the State argues that the plaintiff's complaint was barred by *laches* due to his 21-year delay in filing. It also argues that the complaint is barred by collateral estoppel because the issue of a void judgment has already been decided by a final judgment on the merits in the previous proceeding by the plaintiff. Finally, the State argues that the *mandamus* complaint failed to state a cause of action because it was not the proper vehicle to challenge a prison sentence and that he has no right to a reduced sentence on his consecutive sentence before completing his current sentence. Moreover, the State asserts that *mandamus* relief is not proper because neither defendant participated in his indictment or owes him the duty of release or compensation.

Laches and collateral estoppel are affirmative defenses that have to be raised at the trial court or are forfeited on appeal. Here, the arguments were raised in an amended motion to dismiss that was filed after the court dismissed the complaint for a failure to state a claim. Thus, the arguments were forfeited. "Forfeiture, however, is a limitation on the parties and not the reviewing court ***." *Wilson v. Humana Hospital*, 399 Ill. App. 3d 751, 757 (2010). "This court may overlook forfeiture when necessary to obtain a just result." *Curtis v. Lofy*, 394 Ill. App. 3d 170, 188 (2009). Therefore, this court will address the issue of collateral estoppel.

"The collateral estoppel doctrine bars relitigation of an issue already decided in a prior case." *People v. Tenner*, 206 Ill. 2d 381, 396 (2002). "The doctrine applies when a party participates in two separate and consecutive cases arising on different causes of action and some controlling fact or question material to the determination of both causes has been adjudicated against that party in the former case by a court of competent jurisdiction." (Emphasis omitted.) *People v. Hopkins*, 235 Ill. 2d 453, 468 (2009). For the collateral estoppel doctrine to apply, a three-prong test must be met: "(1) the court rendered a final judgment in the prior case; (2) the party against whom estoppel is asserted was a party or in privity with a party in the prior case; and (3) the issue decided in the prior case is identical with the one presented in the instant case." *Tenner*, 206 Ill. 2d at 396.

Here, the first two requirements are easily met. First, there has been a final judgment on both his postconviction petition in *Robinson V* and his *habeas corpus* complaint in *Robinson VI*. Second, the plaintiff has been a party in all the above cases, satisfying the second requirement for collateral estoppel.

Thus, we are only left to determine whether the issues previously decided are identical to the issues presented in the instant case. In the instant appeal and the plaintiff's *mandamus* complaint, he argues that he should be released from prison and that he should

be awarded money damages for being unlawfully held. The underlying issue in all the plaintiff's arguments is that he is being held on a void judgment. This judgment was found not to be void in *Robinson V*. Also, in *Robinson VI*, despite the implication of *res judicata*, this court again confirmed that the judgment was not void and was based on his prior conviction.

Moreover, the arguments made by the plaintiff regarding double jeopardy were also raised in his *habeas corpus* complaint, which he points out in his brief. He argues that since this court found in *Robinson VI* that he was sentenced based on his prior conviction, this constitutes a new fact that proves a double jeopardy violation. This is not, however, new evidence, and this was a recurring theme throughout *Robinson V* as well. A sentence can be increased based upon prior convictions. *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). Finally, we also note that the plaintiff references in his brief that this issue is before the court again. Thus, we conclude that the arguments in the instant appeal are all based on an underlying identical issue which has been adjudicated in prior proceedings.

We conclude that because all three prongs of the collateral estoppel test have been met, this bars these issues from being relitigated. We also note that the plaintiff raises issues regarding his *habeas corpus* complaint. A *mandamus* complaint is not the proper place for those arguments. He took an appeal from the dismissal of his *habeas corpus* complaint to raise those arguments, the dismissal was affirmed, and his petition for leave to appeal to the Illinois Supreme Court was denied (*Robinson v. Hulick*, 229 Ill. 2d 694 (2008)). He is not allowed to revisit those proceedings in his *mandamus* complaint.

CONCLUSION

For the foregoing reasons, we affirm the dismissal of the plaintiff's *mandamus* complaint.

Affirmed.