



extended-term sentence of 50 years in prison. On direct appeal, the First District vacated his sentence and remanded the matter for resentencing. *People v. Lieberman*, 107 Ill. App. 3d 949, 959, 438 N.E.2d 516, 524 (1982). The court noted plaintiff's extended-term sentence was based upon the fact that he had been found guilty of rape, robbery, and intimidation in a Lake County case earlier in October 1980. *Lieberman*, 107 Ill. App. 3d at 959, 438 N.E.2d at 524. However, because the Lake County case had not yet proceeded to the sentencing phase, the court determined it was not a "conviction" as required by the extended-term sentencing provisions and could not provide a basis for plaintiff's extended-term sentence in the Cook County case. *Lieberman*, 107 Ill. App. 3d at 959, 438 N.E.2d at 524.

¶ 5 On January 6, 1983, the matter came before the trial court for resentencing. By that time, plaintiff had been sentenced in the Lake County case to 30 years' imprisonment. Relying on that conviction, the trial court imposed an extended-term sentence of 40 years' imprisonment in the Cook County case. Plaintiff did not appeal.

¶ 6 On July 19, 2001, plaintiff filed a petition under section 2-1401 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-1401 (West 2000)), arguing his sentence was void. On the State's motion, the circuit court dismissed the petition. Plaintiff appealed, arguing "that, at the time he was resentenced, the trial court was not authorized by statute to impose an extended-term sentence based upon a conviction which was not in existence at the time of his original sentencing." *People v. Lieberman*, 332 Ill. App. 3d 193, 196, 772 N.E.2d 876, 879 (2002). The First District disagreed and affirmed the court's dismissal. *Lieberman*, 332 Ill. App. 3d at 198, 772 N.E.2d at 880.

¶ 7 In so holding, the First District noted the statute in effect at both the time of the

original sentencing and at resentencing provided for an extended-term sentence when a defendant had been convicted of a felony after having been previously convicted of the same or greater class felony within 10 years. *Lieberman*, 332 Ill. App. 3d at 197, 772 N.E.2d at 879 (citing Ill. Rev. Stat. 1979, ch. 38, ¶¶ 1005-5-3.2(b)(1), 1005-8-2(a)). Further, it held that plaintiff's resentencing date, January 6, 1983, was the date of his conviction in the Cook County case, noting the date of conviction is the date of the entry of a sentencing order, and that it was "of that date that [plaintiff's] eligibility for the imposition of an extended-term sentence" had to be determined. *Lieberman*, 332 Ill. App. 3d at 197, 772 N.E.2d at 880. The court stated it was "undisputed that, by January 6, 1983, [plaintiff] had been 'previously convicted' of rape in the Lake County Case" and "was, therefore, eligible for the imposition of an extended-term sentence." *Lieberman*, 332 Ill. App. 3d at 197, 772 N.E.2d at 880. The court also held plaintiff's section 2-1401 petition was properly dismissed because it was untimely filed. *Lieberman*, 332 Ill. App. 3d at 198, 772 N.E.2d at 880.

¶ 8 On June 16, 2011, plaintiff filed his *pro se* complaint for *habeas corpus* relief against defendant, Forrest Ashby, director of the DHS facility where he was detained. (We note, at the time plaintiff filed his complaint, Alfreda Kirby was the director of the DHS facility at issue and was named as the defendant in plaintiff's complaint; however, Ashby ultimately replaced Kirby as the facility's director and has been substituted as the proper defendant in the matter.) Again, he challenged his 40-year, extended-term sentence as being void, arguing his conviction in the Cook County case was his "first criminal case," and he had no prior convictions upon which to base an extended-term sentence. By the time plaintiff filed his complaint, he had completed his 40-year term of imprisonment, had been adjudicated a sexually violent person

under the Sexually Violent Persons Commitment Act (725 ILCS 207/1 to 99 (West 1998)), and ordered committed to the care and custody of DHS.

¶ 9 On August 5, 2011, defendant filed a motion to dismiss plaintiff's *habeas corpus* complaint pursuant to section 2-619 of the Civil Code (735 ILCS 5/2-619 (West 2010)), arguing his claim was barred by the doctrine of *res judicata*. On November 7, 2011, the circuit court granted defendant's motion.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, plaintiff argues his 40-year, extended-term sentence was void. Further, he claims the circuit court erred in granting defendant's motion to dismiss his *habeas corpus* complaint on the basis of *res judicata*.

¶ 13 "Motions to dismiss filed pursuant to section 2-619 of the Procedure Code (735 ILCS 5/2-619 (West 2010)) admit the legal sufficiency of the complaint, but assert an affirmative defense or other matter to defeat the claim." *Lynch v. Department of Transportation*, 2012 IL App (4th) 111040, ¶ 19, 979 N.E.2d 113. A dismissal pursuant to section 2-619 is subject to a *de novo* standard of review. *Lynch*, 2012 IL App (4th) 111040, ¶19, 979 N.E.2d 113.

¶ 14 "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 same parties or their privies on the same cause of action." *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467, 889 N.E.2d 210, 213 (2008) (quoting *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334, 665 N.E.2d 1199, 1204 (1996)). "Three requirements must be satisfied for *res judicata* to apply: (1) a final judgment on the merits has been rendered by a court of competent jurisdiction; (2) an

identity of cause of action exists; and (3) the parties or their privies are identical in both actions." *Hudson*, 228 Ill. 2d at 468, 889 N.E.2d at 213.

¶ 15 Here, plaintiff's *habeas corpus* complaint challenged his 40-year, extended-term sentence in the Cook County case as void, contending he had no prior convictions upon which to base an extended-term sentence. As defendant points out, plaintiff previously raised this precise issue in connection with his July 2001 section 2-1401 petition. The circuit court dismissed that petition and the First District affirmed. In affirming, the court specifically addressed the merits of the petition, finding plaintiff's 40-year sentence was authorized by statute and not void as argued in his petition. Given these facts, the record reflects a final judgment on the merits was previously entered involving the same claim. Additionally, both cases involved the same parties or parties in privity. *People ex rel. Burris v. Progressive Land Developers, Inc.*, 151 Ill. 2d 285, 296, 602 N.E.2d 820, 826 (1992) (for purposes of *res judicata*, privity exists between parties who represent the same legal interests). The doctrine of *res judicata* bars plaintiff's claim.

¶ 16 Plaintiff argues fundamental fairness requires consideration of his claim and contends *res judicata* should not apply because his section 2-1401 petition was dismissed on jurisdictional grounds. However, the First District's opinion regarding the dismissal of plaintiff's section 2-1401 petition clearly shows it addressed and resolved the merits of plaintiff's claim, the same claim he now raises in his complaint for *habeas corpus* relief. See *Lieberman*, 332 Ill. App. 3d at 197, 772 N.E.2d at 879-80. The cases plaintiff cites on appeal to support his position are factually distinguishable and inapplicable to the present case.

¶ 17 Plaintiff's contentions on appeal are without merit and the claim of error raised in his complaint for *habeas corpus* relief is barred by the doctrine of *res judicata*. The circuit court

correctly dismissed plaintiff's complaint.

¶ 18

### III. CONCLUSION

¶ 19

For the reasons stated, we affirm the circuit court's judgment.

¶ 20

Affirmed.