

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).

2018 IL App (4th) 170811-U

NO. 4-17-0811

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 30, 2018

Carla Bender

4th District Appellate

Court, IL

CORDELL L. GINES,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
RYAN R. WILSON, LAWRENCE BAPST, and)	No. 16MR578
MARTIN J. RYAN,)	
Defendants-Appellees.)	Honorable
)	Rudolph M. Braud, Jr.,
)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, finding the trial court did not err in granting defendants’ motion to dismiss plaintiff’s complaint.

¶ 2 In June 2016, plaintiff, Cordell L. Gines, filed a *pro se* complaint against defendants, Ryan R. Wilson, Lawrence Bapst, and Martin J. Ryan, alleging legal malpractice and breach of fiduciary duty. Defendants filed a motion to dismiss, which the trial court granted.

¶ 3 On appeal, plaintiff argues the trial court erred in dismissing his complaint. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In February 1997, a Jackson County jury convicted plaintiff of one count of armed robbery, one count of aggravated battery, and five counts of aggravated criminal sexual assault. The trial court sentenced him to a total of 45 years in prison. His convictions and

sentences were affirmed on appeal. *People v. Gines*, No. 5-97-0154 (Jan. 12, 1998) (unpublished order under Supreme Court Rule 23).

¶ 6 In November 1998, plaintiff filed a postconviction petition, which the trial court summarily dismissed two days later. The Fifth District affirmed. *People v. Gines*, No. 5-98-0813 (Apr. 7, 2000) (unpublished order under Supreme Court Rule 23).

¶ 7 In March 2001, plaintiff filed a motion for an order *nunc pro tunc*, which the trial court dismissed the same day. The Fifth District affirmed. *People v. Gines*, No. 5-01-0251 (June 4, 2002) (unpublished order under Supreme Court Rule 23).

¶ 8 In June 2002, plaintiff filed a second petition for postconviction relief, arguing several of his sentences should have been imposed consecutively rather than concurrently. He was warned by counsel that continuing to challenge his sentence could result in him receiving additional time in prison. He persisted in seeking resentencing, and the Fifth District granted relief in July 2003. The appellate court explained plaintiff was convicted of two separate courses of conduct, one consisting of one count of aggravated criminal sexual assault, the armed robbery, and the aggravated battery, and the other consisting of the other four counts of aggravated criminal sexual assault. Thus, consecutive sentences were required for the four counts of aggravated criminal sexual assault under section 5-8-4(a) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-8-4(a) (West 1996)), which mandated sentences for counts of aggravated criminal sexual assault run consecutively to sentences for other offenses committed in the same course of conduct. *People v. Gines*, No. 5-02-0446 (July 16, 2003) (unpublished order under Supreme Court Rule 23).

¶ 9 On remand, the trial court resentenced plaintiff to consecutive terms totaling 77 years in prison for the five counts of aggravated criminal sexual assault and the armed robbery

and a concurrent term of 3 years for the aggravated battery. On appeal, plaintiff argued his sentences were excessive and should be reduced to the minimum six-year term for each conviction and imposed concurrently. He also argued his 77-year aggregate sentence violated section 5-8-4(c)(1) of the Unified Code (730 ILCS 5/5-8-4(c)(1) (West 1996)), which limited the aggregate of consecutive sentences to the sum of the two most serious nonextended-term offenses—in that case, 60 years.

¶ 10 In October 2005, the appellate court affirmed the trial court’s decision as modified. *People v. Gines*, No. 5-04-0065 (Oct. 5, 2005) (unpublished order under Supreme Court Rule 23). The court explained plaintiff could not seek concurrent sentences after previously requesting his sentences be made consecutive, especially when the goal sought—the imposition of consecutive sentences—was legally correct. The court also upheld the 77-year aggregate sentence, explaining section 5-8-4(c)(1) applied only to sentences imposed prior to February 1, 1978, and because plaintiff’s sentences were imposed after that date, they were governed by section 5-8-4(c)(2) of the Unified Code (730 ILCS 5/5-8-4(c)(2) (West 1996)), which provided for a maximum term based on the sentences available for the extended-term versions of the two most serious offenses. Based on plaintiff’s offenses, the maximum aggregate term of consecutive sentences he could have received was 120 years. Thus, the 77-year aggregate sentence was not improper. The court did, however, reduce his concurrent sentence for aggravated battery from three to two years.

¶ 11 In November 2007, plaintiff appealed the dismissal of his *mandamus* action, but he filed his notice of appeal directly with the Fifth District, rather than in the trial court, and the Fifth District dismissed the case. *People v. Gines*, No. 5-07-0670 (Jan. 22, 2008) (order dismissing appeal on court’s motion).

¶ 12 In December 2007, plaintiff filed a *pro se* postconviction petition, alleging the office of the State Appellate Defender, the Attorney General, and the justices of the appellate court who issued the decision in case No. 5-04-0065 had engaged in a conspiracy to keep him in prison longer than required by law. Plaintiff contended he was not eligible for any extended-term sentences, his appellate defender intentionally failed to address the issue, and the appellate court affirmed his extended-term sentences knowing they were improper. Plaintiff sought the modification of his sentences, his immediate release from prison, and \$25 million in punitive damages. The appellate court affirmed the summary dismissal of the petition, holding the record contradicted his allegations. *People v. Gines*, No. 5-08-0052 (Feb. 25, 2009) (unpublished order under Supreme Court Rule 23). The court noted each of plaintiff's sentences was within the normal sentencing range for the offenses at issue.

¶ 13 In July 2009, plaintiff filed another successive postconviction petition without seeking leave to file same, and the trial court denied leave. Plaintiff appealed and the Fifth District affirmed, laying out the prior appeals in its order. *People v. Gines*, No. 5-09-0640 (Feb. 9, 2011) (unpublished order under Supreme Court Rule 23).

¶ 14 Plaintiff filed another successive postconviction petition, alleging his sentences were unconstitutionally disproportionate and did not comply with section 5-8-4(a)'s provisions on consecutive sentencing. The trial court denied him leave to file the petition. On appeal, he argued his case should be remanded for resentencing because his current sentence failed to comply with section 5-8-4(a) and the appellate court's July 2003 order. The Fifth District agreed, finding plaintiff's sentences on four counts of aggravated criminal sexual assault were not made consecutive to one another. The court remanded for consecutive sentences. *People v. Gines*, No. 5-11-0993 (Sept. 3, 2013) (unpublished summary order under Supreme Court Rule

23(c)(2)).

¶ 15 On remand, the trial court resentenced plaintiff to consecutive sentences totaling 60 years on the four counts of aggravated criminal sexual assault that were part of the second course of conduct and to concurrent sentences of 10 years on the count of aggravated criminal sexual assault that was part of the first course of conduct, 7 years for the armed robbery, and 2 years for the aggravated battery. On appeal, plaintiff argued that while the sentences for the first course of conduct could run concurrently with the sentences for the second course of conduct, the count of aggravated criminal sexual assault from the first course of conduct had to run consecutively to the sentences for armed robbery and aggravated battery.

¶ 16 In November 2015, the appellate court agreed, modifying the judgment order to reflect the sentence for the count of aggravated criminal sexual assault in the first course of conduct should run consecutively to the other sentences in that course of conduct. *People v. Gines*, No. 5-14-0050 (Nov. 20, 2015) (unpublished summary order under Supreme Court Rule 23(c)). Plaintiff filed a petition for leave to appeal, which the supreme court denied. *People v. Gines*, No. 120231 (Mar. 30, 2016), 48 N.E.3d 1094.

¶ 17 Thereafter, plaintiff filed a petition for writ of *habeas corpus* in federal court, alleging he received ineffective assistance of counsel in the appeal that resulted in the appellate court's November 2015 decision. In May 2016, the district court declined to dismiss plaintiff's action on preliminary review, noting its "complicated procedural history." *Gines v. Pierce*, No. 16-cv-412-DRH (S.D. Ill.) (May 2016) (ruling in ongoing case).

¶ 18 In June 2016, plaintiff filed a *pro se* "civil complaint in tort for \$5,000,000" against defendants for their breach of fiduciary duty and legal malpractice. Plaintiff alleged defendants breached their fiduciary duty and engaged in "fraudulent representation" by telling

him he was properly sentenced to a 60-year prison term under the extended-term statute when they had a “document from the State[’s] Attorney[’]s office which clearly stated” he was not eligible for an extended-term sentence. By making those statements, plaintiff claimed defendants caused him to serve a sentence in excess of five years longer in prison and caused him to suffer emotional distress.

¶ 19 Plaintiff attached to his complaint several letters he received from defendants, which contain the statements he claims were fraudulent. Plaintiff also attached a one-page excerpt from the transcript of the January 2014 resentencing hearing, wherein an unidentified individual contends that because plaintiff was not eligible for extended-term sentences, the maximum term for his two most serious offenses was 60 years.

¶ 20 In August 2016, defendants filed a motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619.1 (West 2016)). Under section 2-615 of the Procedure Code (735 ILCS 5/2-615 (West 2016)), defendants argued plaintiff failed to allege facts sufficient to state a claim upon which relief may be granted and failed to allege the arguments he wanted them to make would have resulted in a reversal or modification of his conviction or sentence. Under section 2-619 of the Procedure Code (735 ILCS 5/2-619 (West 2016)), defendants argued collateral estoppel barred a claim for malpractice against them.

¶ 21 In response to defendants’ motion, plaintiff argued (1) the “actual innocence rule” does not apply where it is alleged the attorney intentionally breached a fiduciary duty; (2) the exhibits attached to his complaint proved that had defendants “come up to minimum professional standards,” he would have been released from prison; (3) the issue of whether defendants’ actions proximately caused his alleged injury was a factual issue to be decided by the trier of

fact; and (4) he requested by phone and letters that defendants “refrain from” telling him he was “extended term eligible,” but they continued to do so instead of making good-faith arguments for the reduction of his sentence. Plaintiff also argued defendants’ collateral-estoppel argument failed because the decision in his federal *habeas corpus* case, in which he claimed they provided ineffective assistance of counsel, was not yet final.

¶ 22 In October 2017, the trial court granted defendants’ motion to dismiss with prejudice. The court found plaintiff failed to allege facts sufficient to state a claim upon which relief could be granted because he did not plead facts that any arguments defendants failed to make would have resulted in a reversal or modification of his conviction or sentence. The court also found collateral estoppel barred plaintiff’s claim for malpractice because the appellate court had determined in his prior appeals that his sentence is correct and he was not given an extended-term sentence. This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Plaintiff argues the trial court erred in dismissing his complaint. We disagree.

¶ 25 A. Standard of Review

¶ 26 In the case *sub judice*, the trial court granted defendants’ combined motion to dismiss under section 2-619.1 of the Procedure Code. A motion under section 2-619.1 allows a party to “combine a section 2-615 motion to dismiss based upon a plaintiff’s substantially insufficient pleadings with a section 2-619 motion to dismiss based upon certain defects or defenses.” *Edelman, Combs & Lattuner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164, 788 N.E.2d 740, 747 (2003). On appeal, the trial court’s dismissal of a complaint under section 2-619.1 is reviewed *de novo*. *Morris v. Harvey Cycle & Camper, Inc.*, 392 Ill. App. 3d 399, 402, 911 N.E.2d 1049, 1052 (2009).

¶ 27

B. Collateral Estoppel

¶ 28

Section 2-619(a) of the Procedure Code (735 ILCS 5/2-619(a) (West 2016)) allows for the filing of a motion for involuntary dismissal based on defects or defenses set forth in the statute. A defendant may seek an involuntary dismissal if the plaintiff's claim is barred by a prior judgment on a theory of collateral estoppel or *res judicata*. 735 ILCS 5/2-619(a)(4) (West 2016).

“Collateral estoppel is an equitable doctrine, the application of which precludes a party from relitigating an issue decided in a prior proceeding. [Citation.] There are three threshold requirements which must be met before the doctrine may be applied. First, the issue decided in the prior adjudication must be identical with the one presented in the suit in question. Second, there must have been a final judgment on the merits in the prior adjudication. Third, the party against whom estoppel is asserted must have been a party or in privity with a party to the prior adjudication.” *American Family Mutual Insurance Co. v. Savickas*, 193 Ill. 2d 378, 387, 739 N.E.2d 445, 451 (2000).

¶ 29

All three requirements were satisfied by the Fifth District's November 2015 decision. First, the court considered whether plaintiff's current sentence complied with the provisions on consecutive sentencing, which was necessary for a determination whether defendants committed legal malpractice in this case. If plaintiff was sentenced in accordance with the law, he was not injured and defendants did not proximately cause his injury. Second, plaintiff, the party against whom the estoppel is being asserted, was a party to the earlier case.

Third, the Fifth District's decision became final when the Illinois Supreme Court denied plaintiff's petition for leave to appeal.

¶ 30 "It is generally accepted that a criminal conviction collaterally estops a defendant from contesting in a subsequent civil proceeding the facts established and the issues decided in the criminal proceeding." *Talarico v. Dunlap*, 177 Ill. 2d 185, 193, 685 N.E.2d 325, 328-29 (1997). Moreover, "before a plaintiff's conviction is overturned, the plaintiff is collaterally estopped from arguing his innocence, leaving him with no cause of action." *Griffin v. Goldenhersh*, 323 Ill. App. 3d 398, 405, 752 N.E.2d 1232, 1239 (2001). Thus, "a legal malpractice cause of action does not accrue until the plaintiff's conviction is overturned." *Griffin*, 323 Ill. App. 3d at 406, 752 N.E.2d at 1240.

¶ 31 As the correctness of plaintiff's current sentence was established in the Fifth District's decision to which he was a party and that sentence has not been overturned, he was collaterally estopped from challenging the validity of his sentence in the current action. Thus, the trial court did not err in dismissing his complaint with prejudice.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the trial court's judgment.

¶ 34 Affirmed.