2015 IL App (1st) 132731-U

FOURTH DIVISION
December 3, 2015

No. 1-13-2731

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
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 18196
	)	
KEITH BLUNT,	)	Honorable
	)	Jorge Luis Alonso,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice McBride and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held*: Circuit court properly dismissed defendant's petition for relief from judgment, which alleged that his conviction was based on perjury, because claim was barred by *res judicata*.

¶ 2 Defendant Keith Blunt appeals from the circuit court's dismissal of his *pro se* petition for relief from judgment, filed pursuant to section 2-1401 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1401 (West 2010)). He contends that the court erred in denying him relief because his petition alleged that a witness committed perjury at trial. We affirm.

¶ 3 Following a jury trial at which he represented himself, defendant was found guilty of aggravated domestic battery and aggravated battery. He was sentenced, because of his criminal background, to 12 years in prison for the aggravated domestic battery. He was also sentenced to a concurrent extended 10-year prison term for the aggravated battery.

¶ 4 The evidence at defendant's trial established that, on August 17, 2007, defendant, his long-term girlfriend, Andretto Crockett, and Crockett's 13-year son, Travontae Howard, were involved in an altercation.

¶ 5 Crockett testified that, during an argument, defendant hit her in the head with his fist. She hit him back. Howard attempted to fight off defendant, but defendant hit him with a broom. Howard then went to the garbage, pulled out a bottle and hit defendant with it. Crockett picked up a knife, but defendant "wrestled" it from her. After the fight, Crockett noticed that she was bleeding from a cut on her head that eventually required 10 staples to close. Crockett testified that she did not know how she was cut, but defendant was the last person she saw with the knife. Crockett also testified that she did not see defendant slash Howard with the knife. However, she admitted that she previously told an Assistant State's Attorney (ASA) that defendant cut her on the head with a knife and that he swung the knife at Howard. Although Crockett testified that her relationship with defendant ended on the day of the altercation, she admitted she had visited him in jail.

¶ 6 Howard testified that, during the fight, Crockett picked up the knife, but she dropped it, and defendant picked it up and stabbed her in the head. Howard also testified that defendant cut him on the arm with the knife. At trial, Howard held up his right arm and showed the jury the three-inch long scar on his arm left by the knife wound.

¶ 7 Defendant testified that, during the fight, Crockett was drunk. Crockett did not like how defendant spoke to Howard and they began to argue. Defendant said that Crockett grabbed a knife and demanded half of defendant's cigarettes. When defendant laughed, Crockett called to Howard who approached with a bottle. Defendant testified that Howard swung at him with the bottle and then Crockett jumped in front of Howard holding the knife. Defendant grabbed a broom and hit Howard with it. Defendant hit Crockett and the two began wrestling. He also testified that Howard threw a chair at him. He did not know how Crockett was cut, but he admitted that he did have the knife at one point.

¶ 8 After defendant was sentenced, he filed a *pro se* "motion for reduction of sentence." The trial court appointed counsel who filed a supplemental motion to reconsider sentence.

¶ 9 At a hearing on the motion, Howard testified that defendant treated him like a father would, and that "[i]t was an accident." During cross-examination, Howard stated that defendant had been calling the family home, and that he spoke to defendant "every time." He denied that defendant asked him to come to court and say that an accident took place. Howard admitted that defendant deliberately hit him with a broom and Crockett with a fist, but he also said that Crockett ran into the knife and that defendant did not mean to stab him. Although Howard did not remember his trial testimony, upon having the transcript read to him, he admitted that he testified that defendant stabbed him in the arm and Crockett in the head.

¶ 10 Crockett testified that she and defendant had a good relationship, and that he treated her children as "his own." She further stated that defendant had called her grandmother's home more than 10 times since his sentencing, and that Howard spoke to defendant each time. Crockett said that the stab wound to her head was "an accident." She said that defendant only hit Howard with a broom because Howard hit him with a bottle. Crockett planned to let defendant live with her after his release from prison. In allocution, defendant stated that he loved his family and needed to get back to them.

¶ 11 After hearing argument in aggravation and mitigation, the trial court said that it was "painful" to hear Howard testify, because he was a "decent child" who had a mother that endangered him by living with "somebody like defendant." The court declined to call Howard a "liar" even though "he's changed his testimony based upon pressure that's been put on [him]." The court noted that the jury did not believe "this was an accident" and neither did the court; rather, "this was a brutal beating." Therefore, the court declined to reduce defendant's sentence.

¶ 12 Defendant's convictions and sentences were affirmed on direct appeal. See *People v. Blunt*, No. 1-09-1331 (2010) (unpublished order under Supreme Court Rule 23). This court also affirmed the circuit court's dismissal of defendant's *pro se* motion to allow DNA testing. *People v. Blunt*, No. 1-11-1789 (2012) (unpublished order under Supreme Court Rule 23).

¶ 13 In January 2011, defendant filed a *pro se* petition for relief from judgment alleging, in pertinent part, that "newly discovered" evidence demonstrated that Crockett and Howard perjured themselves at defendant's trial. Specifically, defendant claimed that, in a deposition in a federal case, Howard said that the scar on his arm was caused when defendant hit him with a broom, and that Crockett ran into the knife. In support of that claim, defendant attached his own

affidavit, which said that he was present for Howard's deposition and recounted Howard's deposition testimony.

¶ 14 The circuit court denied defendant relief, and this court affirmed that judgment because the only evidence supporting his claim was his own affidavit recounting Howard's statements at his deposition. *People v. Blunt*, 2013 IL App (1st) 111313-U, ¶ 12. Because defendant's affidavit constituted hearsay, it was insufficient to support his claim that Howard had perjured himself. *Id.*

¶ 15 In May 2011, while the appeal of his first petition was pending, defendant filed a second *pro se* petition for relief from judgment alleging that Crockett and Howard lied at trial. Defendant attached an affidavit from Crockett, which alleged that, when she was at a hospital after the incident, a police officer told her that defendant was trying to press charges against her, so she said that defendant must have cut Howard. Crockett said that she was mad at defendant at that time because a few weeks earlier she had gone to jail for hitting defendant in the head with a bottle and that she was under the influence of drugs and pain medication when she spoke to the police.

¶ 16 In July 2011, defendant moved to supplement the petition with Howard's written statement, which was verified pursuant to section 1-109 of the Code (see 735 ILCS 5/1-109 (West 2010)). Howard said that he was actually injured by the broom, not the knife. He further asserted that when he told officers he was injured by a broom, they told him he was cut with a knife. He also told officers that his mother had the knife and he thought he hit her with the bottle. Howard claimed that the officers told him that defendant cut Crockett, so he said what the police wanted him to say. Howard said that he did not see defendant stab Crockett.

¶ 17 The State filed a motion to dismiss the petition, which the circuit court granted. Defendant appeals. [1]

¶ 18 On appeal, defendant contends that the circuit court erred when it denied him relief because Howard's affidavit establishes that Howard committed perjury at trial. Defendant argues that because Howard's testimony that defendant cut him with a knife was the State's "sole evidence" supporting his conviction for aggravated battery, absent that testimony there would be insufficient evidence to support the conviction. Defendant raises no arguments related to Crockett's affidavit.

¶ 19 The purpose of a section 2-1401 petition is to bring to the attention of the trial court facts that, if known at the time of judgment, would have precluded the entry of the judgment. *People v. Haynes*, 192 Ill. 2d 437, 463 (2000). To obtain relief pursuant to section 2-1401, a defendant must set forth specific factual allegations that demonstrate the existence of a meritorious defense or claim, due diligence in presenting the defense or claim, and due diligence in filing the petition. *People v. Waters*, 328 Ill. App. 3d 117, 127 (2002).

¶ 20 Section 2-1401 can provide a basis for relief from a judgment based on false testimony. *People v. Brown*, 169 Ill. 2d 94, 107 (1996). Although a defendant does not have to establish that the false testimony was knowingly used by the State (*id*. at 107-08), he must present clear factual allegations of perjury rather than mere conclusions or opinions (*People v. Thomas*, 364 Ill. App. 3d 91, 104 (2006)). A defendant must show, by clear and convincing evidence, the "substance of his allegations of perjured testimony"; the circuit court must then determine whether this

[1] The trial court also granted the State's motion to dismiss defendant's separate petition for relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq*. (West 2010)). Defendant makes no argument regarding that dismissal on appeal.

evidence warrants a new trial. *Id*. (citing *People v. Burrows*, 172 Ill. 2d 169, 180 (1996)). When a trial court denies relief based on the pleadings alone, this court reviews that judgment *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 14 (2007).

¶ 21 Initially, the State notes that defendant raises the same claim in the instant section 2-1401 petition that he did in his prior, unsuccessful, section 2-1401 petition. The State argues that defendant's claim that Howard committed perjury is barred by the doctrine of *res judicata* because defendant raised it in a prior proceeding and he was denied relief. Defendant responds that this claim is not barred because, although it was raised in the prior section 2-1401 petition, he was denied relief in that proceeding based on his failure to properly support the claim, and in this proceeding the claim is supported by Howard's affidavit.

¶ 22 *Res judicata* provides that a final judgment on the merits bars a subsequent action between the same parties involving the same cause of action. *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 44. For the doctrine of *res judicata* to apply, there must be (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of cause of action; and (3) an identity of parties or their privies. *Id*. Importantly, *res judicata* "extends not only to what was actually decided in the original action, but also to matters which could have been decided in that suit." *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334-35 (1996).

¶ 23 Here, defendant raises the same issue in the instant section 2-1401 petition that he did in his prior section 2-1401 petition: that Howard lied at trial about what caused the scar on his arm. Because the instant petition for relief from judgment raises the same issue based on the same facts, it is barred by the doctrine of *res judicata.* See *Lutkauskas*, 2015 IL 117090, ¶ 44.

¶ 24 Defendant maintains that his claim is not barred by *res judicata* because his prior petition was dismissed based upon the failure to properly support the claim, whereas the instant petition is properly supported. It is true that, in the prior postjudgment proceeding, this court denied defendant relief because defendant's affidavit was hearsay and thus insufficient to warrant relief under section 2-1401. See *Blunt*, 2013 IL App (1st) 111313-U, ¶¶ 12-13. But defendant ignores the fact that *res judicata* bars claims that could have been raised in prior proceedings. Defendant's second section 2-1401 petition contains no explanation of why he could not obtain Howard's statement for his first section 2-1401 petition. Nor did Howard's statement explain defendant's delay. Instead, defendant simply explained that he could not obtain Howard's *deposition* earlier because he could not afford to pay for the transcript. While defendant's indigence could explain his inability to obtain a copy of the deposition, it does nothing to explain why he could not get an affidavit from Howard.

¶ 25 Moreover, the record shows that defendant likely could have obtained an affidavit from Howard well before he filed his first section 2-1401 petition. At the hearing on the motion to reconsider sentence, which occurred nearly two years before defendant filed his first section 2-1401 petition, Howard was willing to testify on defendant's behalf and said that he and defendant had been in regular contact with one another. This is not a circumstance where defendant was unaware of the substance of Howard's potential testimony, or where Howard was uncooperative. Because defendant could have raised this argument during his first section 2-1401 proceedings, it is barred by *res judicata*.

¶ 26 Although *res judicata* does not serve as an absolute bar in criminal proceedings when fundamental fairness so dictates (see, *e.g.*, *People v. Rodriguez*, 355 Ill. App. 3d 290, 296-97

(2005) (change in law)), we need not consider whether to relax the bar in this case, because defendant has not argued in favor of the application of a fundamental fairness exception. And this case does not provide an appropriate occasion for the application of that exception, in any event, as the trial court already heard Howard's "recantation" at the motion to reconsider sentence hearing and found that Howard had been pressured into changing his testimony after trial.

¶ 27 We affirm the trial court's ruling.

¶ 28 Affirmed.