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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ANTONIO KENDRICK,)	Appeal from the Circuit Court
)	of Du Page County.
Petitioner-Appellant,)	
)	
v.)	No. 03—CF—2808
)	
ANTHONY RAMOS, Warden, Stateville)	
Correctional Center,)	Honorable
)	Peter J. Dockery,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Bowman concurred in the judgment.

ORDER

Held: The trial court properly dismissed plaintiff's *habeas corpus* complaint: because his claim had been resolved against him in a prior proceeding, collateral estoppel foreclosed its relitigation; in any event, his claim lacked merit, as the State's amendments to the indictment were in accordance with the legislature's definitions of the offenses and thus did not render his convictions void.

Antonio M. Kendrick appeals from the *sua sponte* dismissal of his *habeas corpus* complaint against Anthony Ramos, Warden of Stateville Correctional Center (a position currently held by Marcus Hardy). Kendrick asserts that his sex-crime convictions are void because "the circuit court had no subject matter jurisdiction over an offense that encompassed the state of mind of the victim."

We hold that, because we addressed the issue Kendrick now raises when we considered his appeal from the dismissal of his postconviction petition, he is collaterally estopped to raise the same issue now. In the alternative, we hold that the claim is meritless. We therefore affirm.

BACKGROUND

A grand jury indicted Kendrick on 10 counts of aggravated criminal sexual assault (720 ILCS 5/12—14(a)(2) (West 2002)), 10 counts of criminal sexual assault (720 ILCS 5/12—13(a)(1)(West 2002)), and 3 counts of aggravated criminal sexual abuse (720 ILCS 5/12—16(c)(1)(ii) (West 2002)). The indictment alleged that the offenses were accomplished by the use of force. A Tennessee rape conviction made him eligible for an enhanced sentence on some counts. The State nol-prossed two of the criminal sexual assault charges before the trial. Kendrick had a jury trial.

At the close of evidence, but before argument, the State moved to amend the indictment as to the remaining counts. To the allegation that each alleged offense was accomplished “by use of force,” it sought to add the alternative “or by threat of force.” Kendrick objected. The State also sought to consolidate allegations in the aggravated criminal sexual assault counts so as to leave five such counts. Kendrick acceded to this change. The court allowed all amendments.

The jury found Kendrick guilty on all counts. The court sentenced him to concurrent life terms on the aggravated criminal sexual assault counts and seven years’ imprisonment on two of the aggravated criminal sexual abuse counts, those terms to be concurrent with one another and consecutive to the life terms. The other counts were merged.

Kendrick appealed, asserting, among other things, that the “threat of force” amendment had been improper. We disagreed, deeming it to have been merely formal and therefore proper. We reasoned as follows:

“Here, the allegation of ‘the use of force’ encompasses an allegation that force was threatened. In the context of a sexual assault, the use of force implicitly includes the threat of force, because the act of using force can reasonably suggest to the victim a threat that more force will be used in the future if he or she does not comply with the perpetrator’s demands.”

People v. Kendrick, No. 2—06—0473, slip op. at 26 (2008) (unpublished order under Supreme Court Rule 23).

We affirmed Kendrick’s convictions.

Kendrick then filed a postconviction petition, which the trial court summarily dismissed. He appealed, and the appellate defender moved to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). Kendrick filed a response in which he modified the argument in the petition so as to assert that his convictions were void. He argued that the legislature had defined aggravated criminal sexual assault and aggravated criminal sexual abuse in terms of the perpetrator’s behavior, not the victim’s state of mind, and that by allowing amendments to the indictment that implicated the victim’s state of mind, we had undermined the legislature’s intent. We noted that Kendrick premised his arguments on the idea that we erred in deciding the direct appeal. *People v. Kendrick*, No. 2—09—0662, slip op. at 3 (2010), (unpublished order under Supreme Court Rule 23). We held that this premise had “no arguable merit” and we stated that we “s[aw] even less [merit] in the assumption that the truth of the premise would result in the voidness of defendant’s convictions.” *Id.*

According to the briefs of both parties, Kendrick filed a complaint for *habeas corpus* in Du Page County on June 10, 2009, naming as defendant the warden of Stateville Correctional Center. The complaint does not appear in the record.

The warden moved to dismiss the complaint without prejudice on the basis that Kendrick had not served him. The trial court, however, “on its own motion, and without addressing the [warden’s] motion to dismiss,” entered an order dismissing the complaint with prejudice as to Kendrick’s primary claims. It noted that Kendrick’s arguments were similar to those he raised in his postconviction petition except that he had added the assertion that the errors deprived the court of jurisdiction. It stated that the arguments in the postconviction petition had been meritless and held that the addition of the jurisdictional argument did not improve them. However, the court raised the concern that any sentence consecutive to a life sentence was void. It later modified Kendrick’s sentences so that the seven-year sentences were concurrent with the life sentences.

Kendrick filed a motion to reconsider in which he claimed that a defective indictment prevents subject-matter jurisdiction from vesting in a trial court. He asserted that the amended indictment was defective and resulted in void convictions. The court denied the motion, and defendant timely appealed.

ANALYSIS

On appeal, Kendrick argues that “the circuit court had no subject matter jurisdiction over an offense that encompassed the state of mind of the victim.” He asserts that the amendments to the indictment, because we allowed them on the premise that “the act of using force can reasonably suggest to the victim a threat that more force will be used in the future,” placed the victim’s state of mind at issue. He further argues that, when the legislature replaced the offense of rape with sexual assault and related offenses, it defined those offenses so that only the perpetrator’s behavior, and not the victim’s state of mind, was relevant. Finally, he argues that the trial court has subject-matter jurisdiction only over justiciable matters, and that, because the legislature intended to exclude the

victim's state of mind from the offenses' definitions, anything involving the victim's state of mind was not justiciable.

The warden has responded. He does not mention the absence of the complaint from the record. Indeed, he describes its contents. He argues that *res judicata* barred the claim, but also that the claim fails on the merits because the charging instrument is without jurisdictional significance.

Kendrick replies that his claim is not that the charging instrument was flawed, but rather that the victim's mind set was not a justiciable matter.

We agree with the warden that a prior judgment barred the issue; we think the bar is best described as one of collateral estoppel. We also hold that Kendrick's claim is without merit.

Initially, we note that the absence of Kendrick's complaint from the record is significant in that we must address the matter as Kendrick has set it out in his briefs, and not the matter as he raised it in his complaint. (The record and the briefs suggest that Kendrick's claim and argument on appeal closely parallel those in his complaint, but we have no way to be certain that they are identical.) However, a party can raise at any time, including for the first time on appeal, a claim that a judgment is void. *E.g., People v. Permanian*, 381 Ill. App. 3d 869, 873 (2008). We therefore consider Kendrick's claim of voidness as it appears in his briefs; we do not address matters relating to the trial court's ruling on the complaint because they are not contained in the record.

We turn now to an explanation of why Kendrick is collaterally estopped to relitigate the issue that he currently raises. For collateral estoppel to apply, three conditions must be satisfied:

“(1) [A] court rendered a final judgment in [a] 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.” *People v.*

Tenner, 206 Ill. 2d 381, 395 (2002) (applying collateral estoppel when a postconviction petitioner had previously raised an issue in a prior postconviction petition and a federal *habeas corpus* petition).

Here, we entered a judgment *against Kendrick* in a prior case, that of the postconviction petition, so the first two conditions are met. We also deem the third condition to be met. In the postconviction appeal, Kendrick argued that, because the legislature defined the offenses in terms of the perpetrator's behavior, not the victim's state of mind, amendments that implicated the victim's state of mind undermined the legislature's intent, and the convictions were therefore void. In this appeal, he argues that, because the legislature deliberately excluded the victim's state of mind from the definition of the offenses at issue, trial courts lack subject-matter jurisdiction over the states of mind of the victims of those offenses. Once we take into account Kendrick's nonstandard usage of legal terms, the issue that Kendrick has raised in both actions appears to us to be identical. Kendrick is therefore collaterally estopped to relitigate the issue in this action.

Collateral estoppel aside, Kendrick's claim is meritless. Kendrick's point seems to be that the victim's state of mind was not properly an element of any of the offenses of which he was convicted, that the amendments made it an element, and that the trial court lacked authority to convict him of a crime other than as defined by the legislature. This argument has multiple flaws, of which we discuss only one: contrary to what Kendrick's arguments require, the amendments did not change the definitions of the offenses.

The legislature has defined aggravated criminal sexual assault as standard criminal sexual assault in the presence of certain aggravating circumstances. 720 ILCS 5/12—14(a)(2) (West 2002).
Further:

“The accused commits criminal sexual assault if he or she:

(1) commits an act of sexual penetration by the *** threat of force[.]” 720 ILCS 5/12—13(a)(1) (West 2002).

The legislature has defined aggravated criminal sexual abuse as sexual abuse in the presence of certain aggravating circumstances. 720 ILCS 5/12—16(c)(1)(ii) (West 2002). Further:

“The accused commits criminal sexual abuse if he or she:

(1) commits an act of sexual conduct by the *** threat of force[.]” 720 ILCS 5/12—15(a)(1) (West 2002).

Thus, by alleging offenses committed “by threat of force,” the amendments were simply a mechanism for placing before the jury charges of aggravated criminal sexual assault and aggravated criminal sexual abuse in forms *that the legislature included in the definitions*. It is irrelevant whether we considered the victim’s state of mind when we deemed the amendments to be merely formal.¹ Our reasoning on that issue had no bearing on the elements of the offenses. The amended indictments charged Kendrick with offenses in forms that the legislature defined—assault or abuse by threat of force—and those charged forms were the ones of which the jury convicted him. Because the convictions were of crimes as the legislature defined them, no support exists for Kendrick’s claim that the court lacked authority to enter the convictions.

CONCLUSION

¹Our explanation of why the use of force also implies the threat of force did not, in fact, consider the state of mind of the particular victim. Rather, it considered the effect of the use of force on a generalized “reasonable person.” This is why we described the use of force “reasonably suggest[ing]” the threat of force. *Kendrick*, slip op. at 26 (2008).

For the reasons stated, we affirm the dismissal of Kendrick's *habeas corpus* complaint.

Affirmed.