2011 IL App (4th) 090576-U

Filed 9/13/11

NO. 4-09-0576

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MAURICE EDWARDS, Defendant-Appellant.	))))))))	Appeal from Circuit Court of Livingston County No. 05CF127 Honorable Robert M. Travers, Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly dismissed defendant's postconviction petition, which alleged, in part, the trial court failed to admonish he would serve a three-year term of mandatory supervised release (MSR) after serving the agreed-upon prison term. On direct appeal, this court held defendant forfeited consideration of the MSR issue by not raising it in his postplea motion. *Res judicata* applies and bars further consideration of the issue.

¶ 2 In May 2007, defendant, Maurice Edwards, initiated a direct appeal of his guilty plea. Defendant argued, in part, his plea should have been vacated because the trial court did not inform him he would have to serve a three-year term of mandatory supervised release (MSR) after his sentence of imprisonment. This court found defendant forfeited the issue by not raising it in his posttrial motion to withdraw his guilty plea. *People v. Edwards*, No. 4-07-0428, at 12 (Aug. 27, 2008) (unpublished under Supreme Court Rule 23).

¶ 3 In May 2009, defendant filed a *pro se* petition under the Post-Conviction Hearing

Act (Act) (725 ILCS 5/122-1 through 122-8 (West 2008)) and again argued his guilty plea and sentence should be vacated because he was not informed he must serve a term of MSR. The trial court, finding defendant's claims had already been litigated, dismissed defendant's petition as frivolous and patently without merit.

¶ 4 On appeal, defendant argues the trial court improperly dismissed his postconviction petition. Defendant contends (1) because this court did not resolve the issue on its merits, the *res judicata* bar does not apply; (2) he did not forfeit the MSR issue by failing to raise it in his posttrial motion to withdraw his guilty plea; and (3) his plea and sentence should be vacated because the court did not inform him of the MSR term before defendant accepted the plea. We affirm.

¶ 5 I. BACKGROUND

¶ 6 In August 2005, defendant entered a negotiated plea of guilty to controlled substance trafficking (720 ILCS 570/401(a)(2)(B) (West 2004)) and unlawful possession with intent to deliver cannabis (720 ILCS 550/4(d) (West 2004)). At the plea hearing, the trial court informed defendant of MSR terms in describing the minimum and maximum prison terms defendant faced "if this were not handled by plea agreement." An MSR term was not discussed with the terms of the plea agreement. Pursuant to the agreement, the trial court sentenced defendant to concurrent prison terms of 20 years for the trafficking offense and 5 years for the unlawful-possession offense. The sentencing order did not mention an MSR term.

¶ 7 In September 2005, defendant mailed a *pro se* motion to withdraw his guilty plea and vacate his sentence. In his motion, defendant alleged he was denied the effective assistance of counsel because he was innocent of the offenses and pleaded guilty only because counsel

stated it was "his best choice." Defendant also argued no factual basis supported his plea.

¶ 8 In November 2005, counsel, appointed to represent defendant on his motion to withdraw his guilty plea, filed an amended motion to withdraw the plea and vacate the sentence. In this motion, defendant argued his trial counsel misadvised him on the availability of good-time credit and on defendant's ineligibility for education and substance-abuse programs.

¶ 9 In December 2006, defendant filed a *pro se* amended motion to withdraw his guilty plea and vacate his sentence. In this *pro se* motion, defendant first argued the trial court failed to admonish him of the three-year MSR term that followed his sentence and he would not have accepted the negotiated plea had he been so admonished.

¶ 10 In April 2007, a hearing was held on defendant's motions. The trial court found defendant was properly admonished of the MSR term. The court further found incredible defendant's testimony he would have rejected the plea had he known the MSR term would apply.

¶ 11 Defendant appealed. On appeal, defendant argued, in part, the plea agreement did not mention he would be subjected to MSR upon completion of his agreed-upon prison sentence. Defendant maintained the plea agreement he entered must be fulfilled or the trial court's decision denying his motions must be reversed.

¶ 12 In November 2008, this court, on denial of rehearing, entered a modified order that affirmed the trial court's judgment. This court found defendant forfeited the MSR issue by not raising the argument in his original or amended postsentencing motion. *Edwards*, No. 4-07-0428, at 10-12. We did not determine whether defendant was properly admonished. Justice Myerscough dissented, concluding the issue was not forfeited and defendant was entitled to relief under *People v. Whitfield*, 217 Ill. 2d 177, 840 N.E.2d 658 (2005). *Edwards*, No. 4-07-0428, at

20-21 (J. Myerscough, dissenting).

¶ 13 In May 2009, defendant filed his *pro se* postconviction petition under the Act. In his petition, defendant raised a number of arguments, including he was not admonished of the MSR term before he entered the negotiated plea in violation of *Whitfield*.

¶ 14 In June 2009, the trial court found defendant's petition frivolous and dismissed defendant's postconviction petition. Regarding defendant's MSR claims, the court found defendant's claims had "been previously adjudicated" and did "not establish a substantial deprivation of his constitutional rights." This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant argues the trial court erroneously dismissed his postconviction petition. Defendant maintains his petition sets forth the gist of a constitutional claim: his plea agreement did not mention defendant would be subject to a period of MSR after he served the agreed-upon prison sentence. Defendant contends the court improperly concluded this claim had been adjudicated and argues his claim is not barred by the doctrines of *res judicata* or forfeiture. Defendant concludes he is entitled to have either the agreement he reached, which did not include a term of MSR, enforced or his guilty plea withdrawn and sentence vacated.

¶ 17 The State disagrees. The State contends defendant's argument is barred by *res judicata*, arguing the same issue was raised on direct appeal and was rejected on forfeiture grounds. The State further maintains, even if we revisit the MSR issue, it fails under our rulings in *People v. Borst*, 372 Ill. App. 3d 331, 867 N.E.2d 1181 (2007), and *People v. Jarrett*, 372 Ill. App. 3d 344, 867 N.E.2d 1173 (2007).

¶ 18 The Act provides a remedy to defendants who claim substantial violations of their

constitutional rights occurred during their trials. *People v. Taylor*, 237 Ill. 2d 356, 371-72, 930 N.E.2d 959, 969 (2010). An action under the Act is a collateral attack on the defendant's conviction and sentence, allowing inquiry into constitutional issues arising before the trial court that have not been, and could not have been, adjudicated on direct review. *Taylor*, 237 Ill. 2d at 372, 930 N.E.2d at 969. Issues raised and decided on direct review are barred under the doctrine of *res judicata*. *Taylor*, 237 Ill. 2d at 372, 930 N.E.2d at 969.

¶ 19 We begin with the trial court's conclusion the MSR claim had been previously adjudicated and therefore defendant's argument was frivolous. Under the *res judicata* doctrine, "a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand[,] or cause of action." *Terry v. Watts Copy Systems, Inc.*, 329 Ill. App. 3d 382, 387, 768 N.E.2d 789, 795 (2002). For the *res judicata* doctrine to bar a previously adjudicated claim, three requirements must be satisfied: (1) the initial judgment was final *on the merits* and was rendered by a court of competent jurisdiction; (2) an identity of causes of action exists, and (3) an identity of parties or their privies exists. *Terry*, 329 Ill. App. 3d at 387, 768 N.E.2d at 795.

¶ 20 Both the State and defendant agree defendant raised the same issue on direct appeal. They also agree this court decided against defendant, upon concluding he forfeited the MSR issue by not raising it in his postplea motion. See *Edwards*, No. 4-07-0428, at 12. Defendant argues, however, because the MSR issue was found to be forfeited, the MSR issue was not decided "on the merits" and is thus not barred by *res judicata*.

¶ 21 Defendant's argument is misguided. Defendant has cited no case law or authority

for the argument before *res judicata* can bar any claim, that particular claim must be resolved "on its merits." The law does not so hold. What is required is a *final judgment on the merits*: the defendant's right to the relief he sought was completely adjudicated in a conclusive and definite manner. See *Fraley v. Boyd*, 83 Ill. App. 2d 98, 102, 226 N.E.2d 81, 83 (1967) ("A judgment is on the merits when it amounts to a decision as to the respective rights and disabilities of the parties based on the ultimate facts or state of facts disclosed by the pleadings or evidence, or both, and on which the right of recovery depends, irrespective of formal, technical or dilatory objections or contentions."). Here, defendant's liability was completely determined on direct appeal–it was determined he forfeited his right to raise the MSR claim. Repeated review of the same issues under the Act is barred by *res judicata*. See *Fraley*, 83 Ill. App. 3d at 102, 226 N.E.2d at 83; *Taylor*, 237 Ill. 2d at 372, 930 N.E.2d at 969.

¶ 22 We further find defendant's position–criminal defendants whose claims were determined waived or forfeited from review on direct appeal may raise those same claims under the Act–is inconsistent with not only the purpose of the Act, but also the purpose of the *res judicata* doctrine. As stated above, the purpose of the Act is to permit inquiry into issues that were not adjudicated on direct review. *Taylor*, 237 Ill. 2d at 372, 930 N.E.2d at 969. Here, defendant's issue was raised and adjudicated on direct review, and this court concluded defendant could not raise the issue. A principal purpose of the *res judicata* doctrine is to avoid repetitive litigation. *Agriserve, Inc. v. Belden*, 268 Ill. App. 3d 828, 830, 643 N.E.2d 1193, 1194 (1994). By asking this court to revisit the MSR claim and the State's forfeiture claim, defendant asks this court to repeat the same litigation.

¶ 23 In his reply brief, defendant urges this court to consider the issue under the

fundamental-fairness exception to the *res judicata* doctrine. Courts will relax enforcement of the doctrine when fundamental fairness so requires it. See *People v. Mahaffey*, 194 Ill. 2d 154, 184, 742 N.E.2d 251, 267 (2000)

¶ 24 We begin by finding defendant has forfeited this argument by not raising it in his opening brief. See Ill. S. Ct. R. 341(h)(7) (eff. Jul. 1, 2008) ("Points not argued are waived and shall not be raised in the reply brief ***."). Defendant also does not develop the argument. Fundamental fairness is generally analyzed in cause-and-prejudice terms. See *Mahaffey*, 194 Ill. 2d at 184, 742 N.E.2d at 267. Defendant provides no arguments or facts to establish the cause-and-prejudice requirements are met. Defendant simply states we should apply the exception to override the *res judicata* bar and decide his MSR claim. Fundamental fairness does not apply in these circumstances. See *Mahaffey*, 194 Ill. 2d at 184, 742 N.E.2d at 267.

¶ 25 III. CONCLUSION

¶ 26 For the stated reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 27 Affirmed.