2012 IL App (4th) 100565-U

Filed 3/8/12

NO. 4-10-0565

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
KEVIN W. STANBRIDGE,	)	No. 01CF298
Defendant-Appellant.	)	
	)	Honorable
	)	Scott H. Walden,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justice McCullough concurred in the judgment.
Justice Cook dissented.

ORDER

¶ 1 *Held*: Because the appellate court held, in a previous postconviction proceeding, that defendant was not in the custody of the Illinois Department of Corrections (DOC) and that he therefore lacked the right to pursue postconviction relief, defendant would be collaterally estopped, in a successive postconviction proceeding, from asserting a right to pursue postconviction relief, given that his factual situation is unchanged from the initial postconviction proceeding; thus, the trial court's denial of leave to file a successive postconviction petition is affirmed.

¶ 2 Defendant, Kevin W. Stanbridge, appeals from an order in which the trial court denied him leave to file a successive petition for postconviction relief. In our *de novo* review (*People v. Thompson*, 383 Ill. App. 3d 924, 929 (2008)), we conclude that the court was correct to deny leave to file a successive petition, because as a consequence of our decision in the previous postconviction proceeding (*People v. Stanbridge*, No. 4-08-0956 (June 23, 2010) (unpublished order

under Supreme Court Rule 23), defendant is collaterally estopped from asserting a right to pursue postconviction relief. Therefore, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 On April 20, 2005, a jury found defendant guilty of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 1998)). On May 3, 2005, the trial court sentenced him to imprisonment for seven years, to be followed by two years of mandatory supervised release (MSR). On direct appeal, we affirmed the trial court's judgment. *People v. Stanbridge*, No. 4-05-0585 (July 14, 2007) (unpublished order under Supreme Court Rule 23). The supreme court denied leave to appeal. *People v. Stanbridge*, 225 Ill. 2d 670 (2007).

¶ 5 On May 24, 2005, the State filed a petition for the civil commitment of defendant pursuant to section 15(a)(1) of the Sexually Violent Persons Commitment Act (725 ILCS 207/15(a)(1) (West 2004)). Consequently, a civil case was opened: *In re Commitment of Stanbridge*, No. 05-MR-45 (Cir. Ct. Adams Co.).

¶ 6 On May 10, 2007, while case No. 05-MR-45 was still pending, defendant completed his term of MSR, and he was discharged from DOC's custody, having fully served his sentence for aggravated criminal sexual abuse. (He was released from prison on May 10, 2005, and the two-year period of MSR expired on May 10, 2007.)

¶ 7 On October 12, 2007, in case No. 05-MR-45, a jury found defendant to be a sexually violent person. In a dispositional hearing on February 21, 2008, the trial court ordered his commitment to institutional care in a secure facility operated by the Illinois Department of Human Services, where he was to remain until he no longer was a sexually violent person. He still is in civil confinement.

¶ 8 On March 20, 2008, defendant filed his first petition for postconviction relief. On the State's motion, the trial court dismissed the petition, and defendant appealed. On appeal, the State supplemented the record with documents showing that defendant's MSR ended on May 10, 2007. The State argued that because defendant no longer was on MSR and hence no longer was in the custody of DOC, he lacked the statutory right to pursue postconviction relief. See *People v. Martin-Trigona*, 111 Ill. 2d 295, 301 (1986).

¶ 9 Defendant responded that notwithstanding his purported discharge from MSR, he had a right to pursue postconviction relief, because under subsection (e) of section 15 of the Sexually Violent Persons Commitment Act (725 ILCS 207/15(e) (West 2008))—a subsection that went into effect on January 1, 2007 (Pub. Act 94-992, § 5 (eff. Jan. 1, 2007)) (adding 725 ILCS 207/15(e) (2006 Ill. Laws 3676, 3680))—the filing of the petition to have him declared a sexually violent person actually tolled the running of MSR. Section 15(e) provided:

> "The filing of a petition under this Act shall toll the running of the term of parole or mandatory supervised release until:
>
> (1) dismissal of the petition filed under this Act:
>
> (2) a finding by a judge or jury that respondent is not a sexually violent person; or
>
> (3) the sexually violent person is discharged under Section 65 of this Act [(725 ILCS 207/65 (West 2008))], unless the person has successfully completed a period of conditional release pursuant to Section 60

> of this Act [(725 ILCS 207/60 (West 2008))]." 725 ILCS 207/15(e) (West 2008).

Defendant contended that because none of those three events listed in section 15(e) had occurred, the term of his MSR had been tolled since May 24, 2005, when the State filed its petition for his commitment as a sexually violent person.

¶ 10 We were unconvinced by defendant's argument because (1) section 15(e) (725 ILCS 207/15(e) (West 2008)) was not in effect when he committed the offense of aggravated criminal sexual abuse and (2) the legislature could not have intended section 15(e) to retroactively increase the severity of sentences for offenses committed before section 15(e) went into effect, given that such retroactivity would have made section 15(e) an *ex post facto* law. *Stanbridge*, No. 4-08-0956, slip order at 6-7. Defendant would have experienced a more onerous punishment if, by reason of tolling pursuant to section 15(e), he had to serve MSR after his release from civil confinement than if the period of MSR ran during his civil confinement. Therefore, we affirmed the second-stage dismissal of the first postconviction petition. We concluded that defendant had served his sentence, including MSR, and thus he was not in the class of persons who had the statutory right to seek postconviction relief: he was not "imprisoned in the penitentiary" (725 ILCS 5/122-1(a) (West 2008)), and he was not otherwise in DOC's custody. *Stanbridge*, No. 4-08-0956, slip order at 7. The supreme court denied leave to appeal. *People v. Stanbridge*, 238 Ill. 2d 670 (2010).

¶ 11 On June 1, 2010, while defendant's appeal of the dismissal of his first postconviction petition was still pending—*i.e.*, a few weeks before we issued our decision explaining the inapplicability of section 15(e) of the Sexually Violent Persons Commitment Act (725 ILCS 207/15(e) (West 2008))—defendant filed a motion for leave to file a successive postconviction

petition. In his motion, he did not state the constitutional claim he proposed to raise in a successive postconviction proceeding. Instead, he recounted some correspondence between himself and his attorneys, apparently for the purpose of establishing that he and his attorneys were, until recently, unaware of section 15(e). Defendant argued in his motion:

> "On January 1, 2007, the M.S.R. term that the petitioner was serving was tolled. His M.S.R. was scheduled to end on May 10, 2007. The new law now leaves 5 months and 10 days of M.S.R. for the petitioner now to serve, if and when he is discharged from SVP status. Having not yet completed his term of sentence pursuant to the criminal sentencing, the petitioner does have standing to file post-conviction petitions. Neither the petitioner, and to the best of his knowledge, his previously appointed attorney's, knew of the new law, until, recently, in the course of a current appeal."

¶ 12 On June 13, 2010, defendant placed a proposed successive postconviction petition in the mailbox of the Rushville Treatment and Detention Facility of the Illinois Department of Human Services, where he was confined. In that document, he claimed to possess evidence of a conspiracy between the trial court and the prosecutor to retaliate against him.

¶ 13 On June 14, 2010, the trial court entered an order denying leave to file a successive postconviction petition. The court's stated reason for the denial was that defendant had "offer[ed] no cause for his failure to bring his claim in [the initial postconviction proceeding]."

¶ 14 On June 15, 2010, the circuit clerk file-stamped the proposed successive postconviction petition, in which defendant alleged a conspiracy. But see *People v. LaPointe*, 227

Ill. 2d 39, 44 (2007) ("Because the statute expressly conditions leave to file on the petitioner's satisfaction of the cause-and-prejudice test, a second or successive petition cannot be considered filed despite its having been previously accepted by the clerk's office.").

¶ 15 II. ANALYSIS

¶ 16 Defendant believes that the law of the case precludes him from relitigating the question of whether section 15(e) of the Sexually Violent Persons Commitment Act (725 ILCS 207/15(e) (West 2008)) has tolled the running of his MSR. Nevertheless, he urges us to create an exception to the doctrine of the law of the case. He argues: "[T]he doctrine of law of the case should be extended to include the same exception as the doctrine of *stare decisis*, specifically, the exception that the established rule need not be followed if following it will cause serious detriment or be prejudicial to public interests." Defendant believes that our previous decision—the one affirming the dismissal of his first postconviction petition—is "detrimental and prejudicial to the public interest" in that it allows DOC "unchecked power" to deprive persons on MSR from pursuing postconviction relief. According to defendant, DOC can sabotage such persons' right to postconviction relief by exercising its power, under section 3-3-8(b) of the Unified Code of Corrections (730 ILCS 5/3-3-8(b) (West 2010)), to prematurely end the period of MSR.

¶ 17 This argument by defendant rests on two assumptions, both of which are incorrect. The first assumption—an implied assumption—is that DOC prematurely terminated defendant's MSR, thereby sabotaging his right to pursue postconviction relief. Actually, DOC did nothing more than inform defendant that his MSR was over because two years had passed since his release from prison. This was not some ploy on DOC's part; this was math.

¶ 18 The second assumption, likewise mistaken, is that the law of the case is the applicable

doctrine in this context. Actually, as the State points out, the law of the case bars relitigation of an issue already decided in the *same* case. *People v. Tenner*, 206 Ill. 2d 381, 395 (2002). A successive postconviction proceeding, however, is a *different* case from the earlier postconviction proceeding. *Id.* at 395-96. Unlike a direct appeal, a postconviction petition is a "collateral attack" upon the conviction and sentence (*id.* at 392), and a "collateral attack" is, by definition, "[a]n attack on a judgment entered in a *different* proceeding" (emphasis added) (Black's Law Dictionary 255 (7th ed. 1999)).

¶ 19 It follows that, instead of the law of the case, collateral estoppel is the applicable doctrine. See *Tenner*, 206 Ill. 2d at 396. Collateral estoppel "bars relitigation of an issue already decided in a prior case." *Id.* In the prior case—that is, in the prior postconviction proceeding—we decided that section 15(e) of the Sexually Violent Persons Commitment Act (725 ILCS 207/15(e) (West 2008)) was inapplicable to defendant. *Stanbridge*, No. 4-08-0958, slip order at 7. That decision was a final judgment against defendant, and the issue in the present case is identical to that in the previous case, namely, whether section 15(e) should be considered to have tolled his MSR. That issue cannot be relitigated. See *Tenner*, 206 Ill. 2d at 396. We are aware of no applicable exception to collateral estoppel, and even if we had authority to create a new exception to collateral estoppel, we do not see how justice would warrant doing so under the circumstances of this case.

¶ 20 III. CONCLUSION

¶ 21 For the foregoing 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.

¶ 22 Affirmed.

¶ 23 JUSTICE COOK, dissenting:

¶ 24 This case has a complicated history. Defendant was originally sentenced on January 9, 2002. He was released from prison on May 10, 2005, and due to a pending petition seeking to have him declared a sexually violent person he was transported to the Illinois Department of Human Services' Rushville Treatment and Detention Facility. On October 12, 2007, a jury found defendant to be a sexually violent person, and on February 21, 2008, he was ordered committed until he was no longer a sexually violent person. Defendant filed a petition for postconviction relief on March 20, 2008, which the trial court dismissed on December 4, 2008. We held, in our order entered June 23, 2010, that defendant had no postconviction petition remedy, because defendant was no longer "imprisoned in the penitentiary" (*Stanbridge*, slip order at 4) and his period of mandatory supervised release had expired on May 10, 2007 (*Stanbridge*, slip order at 2).

¶ 25 However, section 15(e) of the Sexually Violent Persons Commitment Act (725 ILCS 207/15(e) (West 2008) (added by Pub. Act 94-992, § 5 (eff. Jan. 1, 2007) (2006 Ill. Laws 3670, 3680))), tolls the running of mandatory supervised release terms for persons against whom sexually violent person actions are pending. On February 4, 2010, while defendant's appeal was pending in our court, the Department of Corrections sent defendant a letter, advising him that "as of 5/10/2007, you have completed your term of mandatory supervised release." The Department of Corrections has the power to grant early release to a person on mandatory supervised release. 730 ILCS 5/3-3-8(b) (West 2010). It does not appear the Department of Corrections has the power to do so retroactively.

¶ 26 In our June 23, 2010, order, we refused to apply section 15(e) to defendant's case on the basis that such an application would create an *ex post facto* law, retroactively increasing the

sentence for an offense. Actually section 15(e) seems simply to recognize that a person in defendant's situation, who has been continuously incarcerated or committed since his conviction, is one whose liberty is actually restrained at the time of the filing of the postconviction petition. Such an individual is not seeking postconviction review solely to purge his criminal record.

¶ 27 Accepting the majority's statement that a postconviction proceeding is a different case from an earlier postconviction proceeding, and that collateral estoppel applies, a court should not apply the doctrine when it would be unfair to do so. *People v. Pawlaczyk*, 189 Ill. 2d 177, 189, 724 N.E.2d 901, 909 (2000); *Richter v. Village of Oak Brook*, 2011 IL App (2d) 100114, ¶ 25, 958 N.E.2d 700, 711. Collateral estoppel is an equitable doctrine, and a court must balance the harm of giving a previously unsuccessful party a second bite at the apple and the need for judicial economy against the right to a fair adversary proceeding in which both parties have the opportunity to fully present their cases. *Talarico v. Dunlap*, 177 Ill. 2d 185, 192, 685 N.E.2d 325, 328 (1997). A defendant sentenced after January 1, 2007, would clearly be able to file a postconviction petition. This defendant should not be deprived of that right.