MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANT PRO SE

Jimmy Lee Nave, Jr.
Carlisle, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

David E. Corey
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jimmy Nave, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 19, 2022

Court of Appeals Case No. 22A-MI-1264

Appeal from the Sullivan Superior Court

The Honorable Hugh R. Hunt, Judge

Trial Court Cause No. 77D01-2204-MI-181

Mathias, Judge.

[1] Jimmy Nave, Jr. appeals the Sullivan Superior Court's denial of his petition for writ of habeas corpus. Nave raises a single issue for our review, namely,

whether the trial court erred when it dismissed his petition on res judicata grounds. We affirm.

Facts and Procedural History

[2] On September 9, 2021, Nave filed a petition for writ of habeas corpus and asserted that his confinement in the Wabash Valley Correctional Facility was unlawful because he had been prosecuted eight years prior by the "STATE OF INDIANA," in all caps, rather than by "The State of Indiana." *See Nave v. Vanihel*, No. 21A-MI-2204, 2022 WL 164490, at *1 (Ind. Ct. App. Jan. 19, 2022), *trans. denied* ("*Nave I*"). The trial court determined that there was "no basis in law" for Nave's claim and dismissed his petition. *Id.* Nave appealed, and we affirmed, holding both that Nave "waited too long" to raise his purported argument and, his waiver notwithstanding, that his "claim lacks merit." *Id.* at *1-2. Nave sought transfer, which our Supreme Court unanimously denied on March 31, 2022.

[3] Undeterred, on April 18, 2022, Nave filed a second petition for writ of habeas corpus. In his second petition, Nave asserted that he was being unlawfully detained because he had been prosecuted in the name of "State of Indiana" rather than "The State of Indiana"—apparently now complaining about the omission of "The" rather than the use of all caps. Appellant's App. Vol. 2, pp. 14-16. The trial court dismissed Nave's second petition under the doctrine of res judicata. This appeal ensued.

Discussion and Decision

[4] As our Supreme Court has explained:

> Generally speaking, res judicata operates "to prevent repetitious litigation of disputes that are essentially the same, by holding a prior final judgment binding against both the original parties and their privies." *Becker v. State*, 992 N.E.2d 697, 700 (Ind. 2013). This doctrine applies "where there has been a final adjudication on the merits of the same issue between the same parties." *Ind. State Ethics Comm'n v. Sanchez*, 18 N.E.3d 988, 993 (Ind. 2014) (quoting *Gayheart v. Newnam Foundry Co., Inc.*, (1979) 271 Ind. 422, 426, 393 N.E.2d 163, 167). Similar to double jeopardy in the criminal context, res judicata operates to prevent a party from receiving the proverbial "second bite at the apple." *See Garrett v. State*, 992 N.E.2d 710, 721 (Ind. 2013); *Burks v. United States*, 437 U.S. 1, 17, 98 S. Ct. 2141, 2150, 57 L. Ed. 2d 1 (1978).
>
> There are two branches of res judicata: claim preclusion—which has been raised in the present dispute—and issue preclusion. *First Am. Title Ins. Co. v. Robertson*, 65 N.E.3d 1045, 1050 (Ind. Ct. App. 2016). Claim preclusion can be used to bar a successive lawsuit when "a particular issue is adjudicated and then put in issue in a subsequent suit on a different cause of action between the same parties or their privies." *Ind. Alcohol & Tobacco Comm'n v. Spirited Sales*, 79 N.E.3d 371, 381 (Ind. 2017) (citation omitted). Before a court can find that claim preclusion applies to bar a subsequent action, four essential elements must be met:
>
> > (1) The former judgment must have been rendered by a court of competent jurisdiction;
> >
> > (2) The former judgment must have been rendered on the merits;

> (3) The matter now in issue was or might have been determined in the former suit; and
>
> (4) The controversy adjudicated in the former suit must have been between the parties to the present action or their privies.

Ind. State Ethics Comm'n, 18 N.E.3d at 993.

> As one of our colleagues on the Court of Appeals recently noted, this doctrine "undoubtedly performs functions essential to the success of our American legal system" because it prevents the type of repeated litigation "that would keep parties in interminable conflict, bog down our system, and delay or prevent the administration of justice." *State v. Stidham*, 110 N.E.3d 410, 421 (Ind. Ct. App. 2018) (May, J., concurring in result). And we agree. Res judicata is an important tool possessed by litigants and courts alike in quickly resolving repetitive attempts at litigation. . . .

In re Eq. W., 124 N.E.3d 1201, 1208-09 (Ind. 2019).

[5] Here, Nave's entire argument on appeal is that the trial court erred in dismissing his second habeas petition because the judgment at issue in *Nave I* was not a judgment "on the merits" with respect to Nave's claim in the second petition. Appellant's Br. at 7-9. We cannot agree. The issue in both petitions was whether the manner in which the State printed its name on written documents violated Nave's rights. The argument in his second petition, which complained about the omission of the word "The," was not meaningfully different from the argument in his first petition, which complained about the

use of all caps. Further, we held in *Nave I* that Nave's argument regarding the form in which the State typed its name on prosecution documents was untimely; that holding is equally applicable to whatever difference Nave's second petition argued from his first petition. *Nave I*, 2022 WL 164490, at *1-2.

[6] Thus, we agree with the trial court that Nave's second petition was nothing more than his attempt to get the proverbial "second bite at the apple." *See In re Eq. W.*, 124 N.E.3d at 1208-09. The trial court properly dismissed Nave's second petition under the doctrine of res judicata, and we affirm the trial court's judgment.

[7] Affirmed.

Riley, J., and Robb, J., concur.