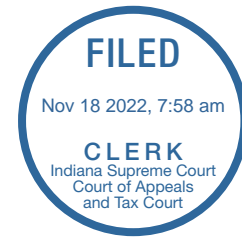


## MEMORANDUM DECISION

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.



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## IN THE COURT OF APPEALS OF INDIANA

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Kente Barker,  
*Appellant-Petitioner,*

v.

State of Indiana,  
*Appellee-Respondent*

November 18, 2022

Court of Appeals Case No.  
21A-PC-2750

Appeal from the Sullivan Superior  
Court

The Honorable Hugh R. Hunt,  
Judge

Trial Court Cause No.  
77D01-2109-PC-500

**May, Judge.**

[1] Kente Barker appeals the trial court's grant of summary disposition for the State on Barker's petition for postconviction relief. The parties raise several issues on

appeal, and we find one dispositive: whether Barker’s petition for postconviction relief is barred by collateral estoppel.<sup>1</sup> We affirm.

## Facts and Procedural History

- [2] Barker was sentenced to a term of thirty-eight years in the Indiana Department of Correction (“DOC”) for Class A felony dealing in cocaine or narcotic drug.<sup>2</sup> Barker was paroled on September 2, 2019. One of the conditions of Barker’s parole required that he not engage in any criminal conduct. Another condition required that he participate in the Marion County re-entry court.
- [3] Shortly thereafter, the DOC’s investigations and intelligence division received information Barker was involved in trafficking synthetic narcotics into Wabash Valley Correctional Facility. Parole agents searched Barker’s residence on October 11, 2019, and found precursors associated with lacing paper with synthetic narcotics. The Indiana Parole Board found Barker violated the conditions of his parole and revoked his parole in February 2020.
- [4] On March 13, 2020, Barker filed a verified petition for writ of habeas corpus in Sullivan Superior Court under cause number 77D01-2003-MI-000153 (“Cause

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<sup>1</sup> On August 22, 2022, Barker filed a motion for leave to amend his brief. As explained further below, Barker is collaterally estopped from challenging his February 2020 parole revocation, and that doctrine also forecloses the arguments raised in Barker’s proposed amended brief. Therefore, contemporaneous with this opinion, we issue an order denying Barker’s motion to amend his brief.

<sup>2</sup> Ind. Code § 35-48-4-1 (1996).

0153”).<sup>3</sup> In the petition, Barker asserted several alleged due process violations, including that he should have received a hearing in front of the re-entry court, that his parole revocation hearing was conducted improperly, and that the parole board’s decision lacked a factual basis. On April 13, 2020, the State filed its response in opposition to Barker’s petition for writ of habeas corpus, and the trial court issued an order denying Barker’s petition on April 14, 2020. On March 31, 2021, we issued an order dismissing with prejudice Barker’s appeal of the denial of his petition for writ of habeas corpus because Barker failed to timely file a notice of appeal.

[5] Barker then filed his petition for postconviction relief in the instant case in September 2021. Like Barker’s petition for writ of habeas corpus, his petition for postconviction relief also challenged the revocation of his parole in February 2020. Barker’s new petition argued the parole board lacked jurisdiction over him, he was unlawfully removed from the re-entry court, an attorney should have been appointed to represent him at the parole revocation hearing, and other assorted due process violations. On November 29, 2021, the State filed a motion to dismiss Barker’s petition for postconviction relief because it

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<sup>3</sup> The State asks us to take judicial notice of several court filings, including filings in connection with Barker’s petition for writ of habeas corpus in Cause 0153 and the State’s motion to dismiss Barker’s petition for postconviction relief before the trial court in the instant case. We possess the authority to judicially notice such documents and do so here. *See* Ind. Evid. R. 201(b) (“A court may judicially notice a law, which includes ... records of a court of this state[.]”); *see also In re D.K.*, 968 N.E.2d 792, 795-96 (Ind. Ct. App. 2012) (taking judicial notice of records in underlying child in need of services proceedings).

constituted an unauthorized successive petition for postconviction relief.<sup>4</sup> The State characterized Barker’s petition for writ of habeas corpus as a previous petition for postconviction relief, and the State asserted:

6. Additionally, the issues raised in the instant post-conviction relief petition are substantially similar to the issues raised in the previous post-conviction relief petition as they both challenge his parole revocation and the hearings held in late 2019 and early 2020.

7. There is no need to revisit the same issues when this Court previously denied Petitioner’s post-conviction relief petition on April 14, 2020.

(State’s Motion to Dismiss at 2.) On December 8, 2021, the trial court issued an order denying the State’s motion. The trial court explained that it “never made a specific finding or formally stated in any order that Petitioner’s Writ of Habeas Corpus was being treated as [a] Petition for Post-Conviction Relief,” and therefore, it believed it would be error to treat Barker’s pending petition for postconviction relief as an unauthorized, successive petition for postconviction relief. (Order on State’s Motion to Dismiss at 1.)

[6] On December 20, 2021, the State filed a motion for summary disposition pursuant to Indiana Post-Conviction Rule 1(4)(g) asking the trial court to deny

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<sup>4</sup> Generally, a person convicted of a crime can seek collateral review through a postconviction proceeding only once. *Burkett v. State*, 195 N.E.3d 394, 397 (Ind. Ct. App. 2022), *reh’g denied*. However, a convicted person may pursue a successive petition for postconviction relief if the person first receives permission from this Court or the Indiana Supreme Court to do so. Ind. P-C.R. 1(12).

Barker's petition. The State contended Barker's due process rights were not violated during the parole revocation proceedings and sufficient evidence supported the parole revocation. Barker then filed a cross-motion for summary disposition. On January 18, 2022, the trial court issued an order granting the State's motion for summary disposition, denying Barker's cross-motion for summary disposition, and denying Barker's petition. Barker subsequently filed a motion to correct error, which the trial court denied on January 31, 2022.

## Discussion and Decision

[7] Initially we note that, like he did before the trial court, Barker proceeds on appeal pro se. We hold pro se litigants to the same standard as trained attorneys and afford them no inherent leniency because of their self-represented status. *Zavodinik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). Pro se litigants "are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so." *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016), *reh'g denied*. "One of the risks that a [litigant] takes when he decides to proceed pro se is that he will not know how to accomplish all of the things that an attorney would know how to accomplish." *Smith v. Donahue*, 907 N.E.2d 553, 555 (Ind. Ct. App. 2009), *trans. denied, cert. denied*, 558 U.S. 1074 (2009).

[8] "We review the grant of a motion for summary disposition in [postconviction relief] proceedings on appeal in the same way as a motion for summary judgment in a civil matter." *Brown v. State*, 131 N.E.3d 740, 742 (Ind. Ct. App.

2019), *trans. denied, cert. denied*, 140 S. Ct. 2783 (2020). Therefore, like with summary judgment, we apply a de novo standard of review. *Id.* “Summary disposition should be granted only if ‘there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.’” *Komyatti v. State*, 931 N.E.2d 411, 415-16 (Ind. Ct. App. 2010) (quoting Ind. P-C. R. 1(4)(g)).

[9] The State asks us to affirm the trial court because Barker’s petition for postconviction relief is barred by collateral estoppel. The doctrine of res judicata is meant to preclude litigation of matters that have already been litigated, and one component of this doctrine is issue preclusion, also known as collateral estoppel. *Freels v. Koches*, 94 N.E.3d 339, 342 (Ind. Ct. App. 2018). As we explained in *Angelopoulos v. Angelopoulos*:

Issue preclusion bars the subsequent litigation of a fact or issue that was necessarily adjudicated in a former lawsuit if the same fact or issue is presented in the subsequent lawsuit. . . .In determining whether issue preclusion is applicable, a court must engage in a two-part analysis: (1) whether the party in the prior action had a full and fair opportunity to litigate the issue and (2) whether it is otherwise unfair to apply issue preclusion given the facts of the particular case. The non-exhaustive factors to be considered by the trial court in deciding whether to apply issue preclusion include: (1) privity, (2) the defendant’s incentive to litigate the prior action, and (3) the ability of the plaintiff to have joined the prior action.

2 N.E.3d 688, 696 (internal citation omitted), *trans. denied*.

[10] As the State notes, “Barker only gets one bite of the apple. The denial of his earlier petition and the dismissal of the appeal with prejudice by this Court bar this attempt to relitigate the validity of the revocation of parole.” (Appellee’s Br. at 13.) Barker and the State litigated both Cause 0153 and the instant case. Therefore, the identity of the parties is the same. In addition, Barker argued in both Cause 0153 and the instant petition for postconviction relief that his due process rights were violated in connection with the February 2020 revocation of his parole. Thus, the identity of the issues between the two suits is the same. Moreover, in both the petition for writ of habeas corpus and the petition for postconviction relief, Barker asked to have the decision revoking his parole vacated. Therefore, we hold collateral estoppel bars Barker from pursuing the instant petition for postconviction relief, and we affirm the trial court. *See Freels*, 94 N.E.3d at 344-45 (holding homeowner’s complaint against builder was barred by the doctrine of collateral estoppel because she had previously sued the builder for alleged defects related to the same project).

## Conclusion

[11] Barker is collaterally estopped from pursuing the instant petition for postconviction relief because his petition is simply an attempt to relitigate the denial of his petition for writ of habeas corpus. Therefore, we affirm the trial court.

[12] Affirmed.

Riley, J., and Tavitas, J., concur.