

MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

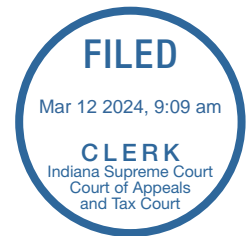


IN THE
Court of Appeals of Indiana

Michael D. Hart,
Appellant-Petitioner

v.

State of Indiana,
Appellee-Respondent



March 12, 2024

Court of Appeals Case No.
23A-PC-2144

Appeal from the Sullivan Circuit Court
The Honorable Robert E. Hunley II, Judge

Trial Court Cause No.
77C01-2307-PC-357

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Michael D. Hart appeals the Sullivan Circuit Court's order dismissing his petition for post-conviction relief. He raises two issues in this appeal, but we address only the following dispositive issue: whether Hart's challenge to his parole revocation is barred by the doctrine of res judicata.

[2] We affirm.

Facts and Procedural History

[3] In 1998, the Marion Superior Court sentenced Hart to fifty years in the Department of Correction after Hart was found guilty of murder. Hart served over twenty years of his sentence, and on June 20, 2019, the Indiana Parole Board released Hart to parole.

[4] In Spring 2020, law enforcement officers were investigating persons trafficking controlled substances into the Department of Correction, and Hart was a suspect. In June, Hart's home was searched, and officers found a small quantity of marijuana. A parole officer also searched Hart's cell phone and concluded that Hart was trying to locate 100 Xanax tablets.

[5] In August, the Parole Board issued a parole warrant for Hart, and he turned himself in. Hart pleaded not guilty to the alleged parole violation. On November 4, 2020, the Parole Board found that Hart had violated his parole because Hart had conspired with an inmate to deliver controlled substances into

a correctional facility. On that date, he was reincarcerated at the Wabash Valley Correctional Facility.

[6] On April 28, 2021, Hart, representing himself, filed a verified petition for a writ of habeas corpus in the Sullivan Superior Court under case number 77D01-2105-MI-231. Hart argued that he had completed his fifty-year sentence when his executed time was combined with his earned good time credit and his time served on parole. Appellant’s App. p. 40. Hart also alleged notice and due process violations with respect to the parole revocation proceedings and challenged the Parole Board’s factual findings. *Id.* at 41-45. Therefore, Hart claimed that he was unlawfully incarcerated and was entitled to immediate release. Hart attached the Parole Board’s factual findings to his petition.

[7] In response, the State argued that Hart was not entitled to the relief requested and urged the trial court to “grant summary disposition in [its] favor pursuant to [Rule 1, §§ 4\(f\) and 4\(g\), Indiana Rules of Post-Conviction Remedies](#)” *Id.* at 51. The State claimed that Hart’s petition was “properly a petition for post-conviction relief as the Petitioner challenges his parole revocation and is not eligible for immediate relief from custody.”¹ *Id.* The State attached exhibits

¹ [Indiana Post-Conviction Rule 1, Section 1\(a\)\(5\)](#) allows a “person who has been convicted of, or sentenced for, a crime by a court of this state” to file a petition for post-conviction relief where the person is claiming that “his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint[.]” For this reason, the State and the Sullivan Superior Court treated Hart’s pro se petition for writ of habeas corpus as a petition for post-conviction relief. Further, Hart could have, but failed to, challenge the Sullivan Superior Court’s decision to treat his petition as one for post-conviction relief in his appeal of the Superior Court’s order granting the State’s motion for summary judgment.

to its motion that included Hart’s parole release agreement, the Parole Board’s disposition, Hart’s waiver of a preliminary parole revocation hearing, and his credit time records. *Id.* Hart then filed a response to the State’s motion for summary judgment.

[8] The trial court granted the State’s motion for summary judgment and concluded that “Petitioner is lawfully incarcerated pursuant to a parole violation and is not entitled to immediate discharge.” *Id.* at 53. Hart unsuccessfully filed a motion to correct error. He then initiated an appeal but failed to file his appellant’s brief. His appeal was dismissed.

[9] On June 25, 2023, Hart filed a petition for post-conviction relief in Sullivan Circuit Court under cause number 77C01-2307-PC-357 similarly challenging his November 2020 parole revocation. Hart argued that the records from his parole revocation hearing did not support the Parole Board’s factual findings in its order revoking his parole. In response, the State claimed that Hart’s petition should be dismissed because Hart was required, but failed, to follow the procedure outlined in [Indiana Post-Conviction Rule 1\(12\)](#) for filing successive post-conviction petitions. The State further argued that, because the Court of Appeals had not given Hart permission to file a successive petition, the trial court lacked jurisdiction to adjudicate Hart’s petition. *Id.* at 65. In the alternative, the State argued that Hart’s petition for post-conviction relief was barred under the doctrine of res judicata.

[10] On August 25, 2023, the trial court issued an order dismissing Hart’s petition. The court concluded that Hart’s prior petition filed under cause number 77D01-2105-MI-231 “was a petition for post-conviction relief challenging the November 4, 2020, revocation of parole.” *Id.* at 93. For this reason, the court found that it “lacks jurisdiction to consider this new-post conviction case.” *Id.* The court also concluded that “[i]f this petition were not barred as an unauthorized successive petition for post-conviction relief, the Court would dismiss it because it is barred by the res judicata effect of the Superior Court case, 77D01-2105-MI-231.” *Id.*

[11] Hart now appeals.

Discussion and Decision

[12] Hart argues that the trial court erred when it dismissed his petition for post-conviction relief after concluding that his claim was barred by the doctrine of res judicata. “Res judicata is a legal doctrine intended ‘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.’” *Montgomery v. State*, 58 N.E.3d 279, 281 (Ind. Ct. App. 2016) (quoting *Ind. State Ethics Comm’n v. Sanchez*, 18 N.E.3d 988, 993 (Ind. 2014)). It applies where there has been a final adjudication on the merits of the same issue between the same parties. *Id.*; see also *Miller v. Patel*, 212 N.E.3d 639, 646 (Ind. 2023) (explaining that res judicata, or claim preclusion, “serves a broader role as a complete and categorical bar to subsequent litigation on the same claim

between identical parties”) (quotation and citation omitted). Res judicata bars subsequent litigation if the following requirements are 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.

Sanchez, 18 N.E.3d at 993 (citation omitted). “If any element is absent, res judicata does not apply.” *Id.*

[13] Hart concedes that the Sullivan Superior Court’s judgment in case number 77D01-2105-MI-231 was a judgment rendered by a court of competent jurisdiction and that the controversy adjudicated was between the same parties. But he disputes that the Superior Court’s judgment was a judgment on the merits and that the issue in this case was or could have been determined by the Superior Court in the prior case.

[14] First, we address Hart’s claim that the Superior Court’s judgment was not a judgment on the merits. Appellate courts review “the grant of a motion for summary disposition in post-conviction proceedings on appeal in the same way as a motion for summary judgment.” *Norris v. State*, 896 N.E.2d 1149, 1151 (Ind. 2008). And a summary judgment is a decision on the merits. *Poulard v. Lauth*, 793 N.E.2d 1120, 1123 (Ind. Ct. App. 2003) (citing *Foshee v. Shoney’s*,

Inc., 637 N.E.2d 1277, 1280 (Ind. 1994)). Therefore, the State argues that the Superior Court’s judgment granting its motion for summary disposition was a judgment on the merits.

[15] In 2021, Hart filed his petition for “State Writ of Habeas Corpus” in cause number 77D01-2105-MI-231, alleging that with regard to his November 2020 parole revocation, he was denied due process and the evidence did not support the Board’s factual findings and decision to revoke his parole. Appellant’s App. pp. 39-47. Hart attached the Parole Board’s findings of fact to his petition. The State filed a motion for summary judgment citing [Post-Conviction Rule 1, § 4](#). In support of the motion, the State included the following exhibits: Hart’s parole release agreement, the Parole Board’s disposition, Hart’s waiver of a preliminary parole revocation hearing, and his credit time records. The Superior Court granted the motion for summary judgment and concluded that Hart was “lawfully incarcerated pursuant to a parole violation and is not entitled to immediate discharge.” *Id.* at 53. We agree with the State that the Superior Court’s order granting summary judgment after reviewing the arguments and evidence submitted by the parties was a judgment on the merits.²

² In support of his argument that the prior judgment was not a judgment on the merits, Hart inaccurately claims that the Superior Court dismissed his petition under [Trial Rule 12\(B\)\(6\)](#). The State filed its motion for summary judgment citing [Post-Conviction Rule 1 § 4\(f\)](#) and [4\(g\)](#). And the State attached exhibits from Hart’s Parole Revocation proceedings to its motion to support its argument that it was entitled to summary judgment. We therefore reject Hart’s unfounded claim that his prior petition was dismissed pursuant to [Rule 12\(B\)\(6\)](#).

[16] The State is also correct that the same issue presented in this case was litigated in the Superior Court proceeding. In both petitions, Hart challenged the Parole Board's decision to revoke his parole in November 2020. Appellant's App. pp. 6-16; 43-47. In both petitions, Hart alleged that the Parole Board's revocation of his parole was not supported by the evidence, and therefore, he was entitled to immediate discharge from prison.³

[17] We are also not persuaded by Hart's claim that he did not have a "full and fair opportunity to litigate the issue." Appellant's Br. at 15. Hart does not provide any argument to support this claim beyond asserting that the Superior Court's judgment was dismissed pursuant to [Rule 12\(B\)\(6\)](#). However, as we noted above, the Superior Court did not dismiss the petition but issued summary judgment to the State. The Superior Court reviewed the parties' petitions and responses, and the exhibits provided by the parties. Moreover, Hart initiated an appeal of the Superior Court's judgment, but the appeal was dismissed when he failed to file his Appellant's Brief.

Conclusion

[18] For all of these reasons, we conclude that Hart's attempt to relitigate the issue concerning the propriety of his parole revocation is barred by the doctrine of res

³ Hart claims that he was not attacking the validity of his parole revocation in his prior petition filed in Superior Court despite the fact that he made that precise claim in that pleading. Hart alleged that he was unlawfully confined in prison "under the guise; or false pretense of an undocumented/unfounded allegation of a 'parole revocation[.]'" Appellant's App. p. 45. Moreover, he alleged that the Parole Board's findings of fact contained "false, misleading and unreliable statements of material value, inconsistent with the facts on the face of the record." *Id.* at 44.

judicata. We therefore affirm the trial court's order dismissing his petition for post-conviction relief.

[19] Affirmed.

Tavitas, J., and Weissmann, J., concur.

ATTORNEY FOR APPELLANT

Andrew A. Achey
The Law Office of Andrew Achey
Logansport, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

David A. Arthur
Deputy Attorney General
Indianapolis, Indiana