

NOT DESIGNATED FOR PUBLICATION

No. 120,102

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

TERRY WALLING,
Appellant,

v.

STATE OF KANSAS,
Appellee.

MEMORANDUM OPINION

Appeal from Leavenworth District Court; DAVID J. KING, judge. Opinion filed May 17, 2019.
Affirmed.

Joseph A. Desch, of Law Office of Joseph A. Desch, of Topeka, for appellant.

Sherri Price, legal counsel and special assistant attorney general, of Lansing Correctional Facility, for appellee.

Before HILL, P.J., BRUNS, J., and BURGESS, S.J.

PER CURIAM: After our review of the procedural history of this case and considering all the other cases Terry Walling has filed, we conclude that the district court properly dismissed this habeas corpus petition on the grounds of res judicata. Walling has litigated this issue in the past and there is no legal reason to relitigate it now. We affirm.

We list the prior actions taken by Walling.

To make sense of this case it is necessary to review Walling's extensive criminal history. He has felony convictions arising in Douglas, Johnson, and Wyandotte County beginning in 1985 and extending to 2013. He has tried to persuade various courts that his indeterminate sentence imposed in 1985 has been satisfied.

The Douglas County District Court in 1985 sentenced Walling to an indeterminate prison sentence of 20 years to life for three counts of rape. After his parole, Walling committed several crimes in Johnson and Wyandotte Counties. For these crimes, he received a series of determinate sentences.

In Johnson County, Walling was convicted in four criminal cases between 2010 and 2011. The record shows all four sentences were concurrent. Then, in 2012, Walling received another conviction in Wyandotte County. There, he was ordered to serve a determinate sentence of 17 months in prison consecutive to his Johnson County sentences.

Moving on then, in January 2013, Walling was convicted of felony theft in Johnson County. The court sentenced him to 17 months in prison with 12 months' postrelease supervision. His sentence was consecutive to his Wyandotte County sentences since he was on parole at the time of this conviction. Walling's parole was revoked in March 2013 and passed over to September 2015.

In April 2014, the Wyandotte County District Court closed Walling's 2012 criminal case.

Then, Walling filed a K.S.A. 60-1507 motion in Douglas County District Court in February 2015, where he claimed that since his Johnson County sentence was

consecutive to his Wyandotte County sentence, and his Wyandotte County sentence was complete, his sentence of 20 years to life from his 1985 Douglas County convictions was also closed. Over the course of the next several months, Walling filed several amended and supplemental motions making this same claim, or variations of it in several courts.

Walling also moved to correct an illegal sentence and sought habeas corpus relief in his Johnson County criminal case. In response, the district court found that Walling's complaint was about the Department of Corrections "not properly counting his sentences," and proper jurisdiction was in the county of his incarceration—Leavenworth County. The district court ordered the transfer of the Johnson County case to Leavenworth County.

In August 2015, Walling was granted parole from his 17-month determinate sentence in his Johnson County conviction.

After that, Walling's counsel asked that if the Douglas County District Court found Walling was actually challenging the length of his confinement, then rather than dismissing his K.S.A. 60-1507 motion, the court should treat it like a petition under K.S.A. 60-1501 and transfer it to Leavenworth County. The court did so.

In November 2015, the Leavenworth County District Court considered Walling's grievances about the calculation of his sentences. The court summarized Walling's criminal history and found that once released from his Johnson County determinate sentence of 17 months, he would be on postrelease supervision. The court further held that during postrelease supervision, Walling would continue to be under parole supervision for the 1985 sentence of 20 years to life. The district court construed Walling's argument to be:

"Wyandotte County terminated his sentence without remanding him to the custody of DOC, [and] that somehow terminates the original [20] to life sentence. He further argues that as he now is serving the Johnson County determinate sentence of 17 months plus subsequent post release supervision, his 198[5] Douglas County indeterminate sentence should now be considered served."

The court was not persuaded:

"No matter how one may consider the determinate sentences to have been served or yet to be served and how long the post release supervision is to be served, the [20] to life sentence from 84 CR387 still remains as an active sentence that has yet to be completed and is still subject to supervision and revocation by the prisoner review board."

The court denied Walling's request for a writ of habeas corpus under K.S.A. 60-1501 and dismissed his petition.

Then in September 2016, in a memorandum decision the Douglas County District Court found that Walling's motion under K.S.A. 60-1507 was more appropriate as a K.S.A. 60-1501 claim because he disputed his current sentence length claiming cases in other counties terminated his 1984 case. The district court found it lacked jurisdiction over the Department of Correction's calculation of Walling's confinement and ordered the case transferred to Leavenworth County District Court.

Undeterred in April 2017, Walling then sought a writ of habeas corpus under K.S.A. 60-1501 in Johnson County District Court. He alleged the Kansas Prisoner Review Board paroled him from his indeterminate sentence of 20 years to life to his "new sentence" with a 12-month postrelease supervision period. He claimed that the Board converted his 12-month supervision period to lifetime postrelease supervision, a violation of "Ex Post Fact Prohibition."

In May 2017, the Douglas County District Court transferred its case to Leavenworth County District Court. The action was amended to a petition under K.S.A. 60-1501. Similarly, the next month, the Johnson County case was transferred to Leavenworth County District Court because the Johnson County court lacked jurisdiction.

The Leavenworth District Court then considered Walling's arguments in December 2017 in the cases from Douglas, Johnson, and Wyandotte County. Walling's counsel stated, "The one remaining issue would be whether or not he should be on parole. He's paroled to a—a life term." He argued that "because he served a[n], incarceration term in Wyandotte County that he should be discharged completely." The attorney for the Lansing Correctional Facility argued that the issue should be dismissed because Walling previously raised the same claims to the court and they were denied. Walling's attorney conceded that Walling brought up whether the completion of his Wyandotte County sentence "cuts off the supervision requirement."

The Leavenworth County District Court held: "This petitioner is again seeking the same relief he sought in 2014." It ruled that "the issue presented is the same as was argued in 2014 CV 473," and the issue was "moot by reason of the doctrine of *res judicata*" and denied Walling's petition.

Walling appeals the dismissal to this court.

The district court ruled correctly.

The doctrine of *res judicata* prohibits a party from bringing claims based on the same set of facts against the same adverse party in successive legal actions when the first action has been resolved on the merits. *Cain v. Jacox*, 302 Kan. 431, 434, 354 P.3d 1196 (2015). *Res judicata* prohibits a plaintiff from filing a successive suit against a defendant

based either on factually related claims omitted from an earlier suit or on claims actually asserted and lost on a final judgment on the merits in the earlier suit. The Kansas Supreme Court stated the grounds for invoking res judicata succinctly:

- same claim;
- same parties;
- claims were or could have been raised; and
- a final judgment on the merits. *Winston v. Kansas Dept. of SRS*, 274 Kan. 396, 413, 49 P.3d 1274 (2002).

Whether res judicata bars a legal action presents a question of law, subject to unlimited review on appeal. *Cain*, 302 Kan. at 434.

Kansas appellate courts have applied res judicata to 60-1501 actions successively raising repetitive legal challenges. See *Woods v. State*, 52 Kan. App. 2d 958, 379 P.3d 1134 (2016); *Anderson v. Anderson*, 214 Kan. 387, 393, 520 P.2d 1239 (1974). In *Anderson*, the court applied res judicata in a 60-1501 action brought by a parent challenging the custody of minor child. Then most recently, in *Spry v. Pryor*, No. 119,573, 2019 WL 638266, at *1 (Kan. App. 2019) (unpublished opinion), *petition for rev. filed* February 19, 2019, our court recognized the applicability of the res judicata doctrine generally to 60-1501 actions and applied the doctrine.

Our review of Walling's claims reveals he has consistently argued, from 2014 to 2017, and from district court to district court, that the closing of his Wyandotte County sentence "effectively" terminated his Douglas County life sentence, and thus he should no longer be subject to conditions of parole or other forms of postrelease supervision. He raised substantially the same complaint based on the same facts against the same defendant in his 2014 petition in Leavenworth County District Court. The district court entered a judgment on the merits in that case against Walling. Accordingly, the district

court—in its December 2017 memorandum decisions—properly relied on res judicata to dismiss the petitions.

Affirmed.