

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 125,113

STATE OF KANSAS,
Appellee,

v.

DAVID MONCLA,
Appellant.

SYLLABUS BY THE COURT

1.

Res judicata bars a defendant from raising the same claim in a second or successive motion to correct an illegal sentence under K.S.A. 2022 Supp. 22-3504, unless subsequent developments in the law shine new light on the original question of whether the sentence was illegal when pronounced.

2.

A party filing a successive motion to correct an illegal sentence bears a threshold burden to prove that a subsequent development in the law undermines the earlier merits determination. A successive motion that merely seeks a second bite at the illegal sentence apple is susceptible to dismissal according to our longstanding, common-law preclusionary rules.

Appeal from Sedgwick District Court; ERIC N. WILLIAMS, judge. Opinion filed June 23, 2023.
Affirmed.

David L. Miller, of The Law Office of David L. Miller, LLC, of Wichita, was on the briefs for appellant.

Matt J. Maloney, assistant district attorney, *Marc Bennett*, district attorney, and *Kris Kobach*, attorney general, were on the brief for appellee.

The opinion of the court was delivered by

WALL, J.: This is the second time that David Moncla has appealed a district court's denial of a motion to correct an illegal sentence to our court. As he did in his prior appeal, Moncla argues that the district court's irregular procedures divested it of subject-matter jurisdiction to impose restitution. See *State v. Moncla*, 301 Kan. 549, 554, 343 P.3d 1161 (2015). But the State argues that Moncla is barred from bringing that claim again under a legal doctrine called *res judicata*. That doctrine generally prevents a person from raising a particular claim after a court has ruled on it. See *State v. Kingsley*, 299 Kan. 896, 901, 326 P.3d 1083 (2014).

We agree with the State that Moncla has raised the same claim. And because no later development in the law has undermined our earlier decision on the legality of Moncla's sentence, we affirm the district court's order.

FACTS AND PROCEDURAL BACKGROUND

A jury convicted Moncla of first-degree murder in 1995. He is serving a life sentence with no chance of parole for 40 years (a so-called "hard 40" sentence). Our court affirmed Moncla's conviction and sentence on direct appeal. *State v. Moncla*, 262 Kan. 58, 936 P.2d 727 (1997). And his attempt to pursue habeas-corpus relief proved unsuccessful. *Moncla v. State*, No. 101,979, 2010 WL 2978032, at *4 (Kan. App. 2010) (unpublished opinion).

This appeal is about the district court's imposition of restitution and fees. At Moncla's sentencing hearing, the district court stated that the murder victim's sister-in-law was seeking \$13,537.64 in restitution for the victim's funeral, burial, and other expenses. When Moncla's counsel informed the court that the State had not yet provided receipts supporting that amount, the trial court gave the parties 30 days to determine restitution, commenting that it would hold a hearing if there was still a dispute over the amount. When no party requested a restitution hearing, the court filed a journal entry of sentencing 34 days later. That journal entry ordered Moncla to pay \$164.50 in court costs, \$220 in witness fees, and \$13,627.64 in restitution.

Moncla first challenged the district court's procedure for ordering restitution in a 2013 motion to correct an illegal sentence under K.S.A. 22-3504. He argued that the district court lacked subject-matter jurisdiction to impose restitution, court costs, and fees because it was not ordered in open court with him present. *State v. Jones*, 292 Kan. 910, 914, 257 P.3d 268 (2011) (a sentence imposed by a court without jurisdiction is illegal); see also K.S.A. 2022 Supp. 22-3504 (same). The district court summarily denied the motion, meaning that it dismissed the motion ""without a hearing or appointment of counsel"" because it determined that ""the motion, files, and records of the case conclusively"" showed that Moncla was entitled to no relief. See *Jones*, 292 Kan. at 913. On appeal, our court was "satisfied that 'the spirit, if not the letter' of the proper procedure was followed," so we held that the district court had subject-matter jurisdiction to impose the restitution, costs, and fees. *Moncla*, 301 Kan. at 554 (citing *State v. Frierson*, 298 Kan. 1005, 1021, 319 P.3d 515 [2014]).

Then in 2019, Moncla filed the illegal-sentence motion that is the subject of this appeal. He again argued that the district court lacked subject-matter jurisdiction to impose restitution because he was not present. In Moncla's view, the district court should have explicitly ordered a continuance of his sentencing hearing and entered the order of restitution within 30 days. He asked the court to correct the restitution amount via an

amended order (called a "nunc pro tunc" order). Once again, the district court summarily denied the motion. It determined that Moncla's sentence was not illegal and that the appellate courts had ruled on his claim.

Moncla now appeals that order. His appeal comes directly to us because he was convicted of the off-grid crime of first-degree murder. See K.S.A. 2022 Supp. 22-3601(b)(4).

ANALYSIS

Moncla argues that the district court's sentencing procedures divested it of jurisdiction to impose restitution. The State insists that the doctrine of res judicata bars that claim because our court resolved it in his last appeal. Whether res judicata bars a claim is a question of law, meaning that we need not defer to the district court's decision. *Kingsley*, 299 Kan. at 899. The district court's denial of the illegal-sentence motion embraced the doctrine without naming it.

As we have said, res judicata prevents a litigant from raising claims that the courts have resolved. 299 Kan. at 901. The doctrine generally bars a claim when the same parties are involved, the same claim was previously raised, and there has been a final judgment on the merits. 299 Kan. at 901.

There is no dispute that this appeal involves the same parties as Moncla's prior appeal. But Moncla insists that res judicata does not apply to this appeal for three reasons. First, he argues there was no final judgment on the merits of his previous illegal-sentence claim. Second, Moncla believes that he raised new claims in his 2019 motion. Finally, Moncla suggests he can bring this claim under a limited exception to ordinary res-judicata principles that we have recognized in the illegal-sentence context. Under that

exception, *res judicata* does not apply if a development in the law shows that a previous illegal-sentence motion was improperly denied. See *State v. Murdock*, 309 Kan. 585, 592, 439 P.3d 307 (2019).

We disagree with all three of Moncla's arguments. First, Moncla contends there was no final decision on the merits of his prior illegal-sentence claim because the district court summarily denied it. But a summary denial of an illegal-sentence motion *is* a ruling on the merits. As we explained above, it means that the district court ruled that the ""motions, files, and records of the case conclusively show the defendant is not entitled to relief."" *Jones*, 292 Kan. at 913. We affirmed the district court's summary denial, and our decision became final when we issued the mandate in that case. So there has been a final decision on the merits of Moncla's 2013 illegal-sentence claim.

Second, Moncla argues that he raised a new claim in his 2019 motion. In Moncla's view, the 2019 motion raises a new claim because he argues that the sentencing court should have ordered a continuance of his sentencing hearing and resolved restitution within 30 days. And in his 2013 motion, he argued only that the district court failed to set restitution while he was present. But both arguments go to the same claim—whether the district court's sentencing procedures deprived it of subject-matter jurisdiction to order restitution. And in his prior appeal, we specifically addressed the procedural nuances the district court employed and concluded that they did not deprive the court of jurisdiction. *Moncla*, 301 Kan. at 554. Moncla also suggests that his request for a *nunc pro tunc* order presents a new claim. We disagree. His request for that order is simply a different remedy for an underlying claim challenging the district court's jurisdiction to order restitution, and our court previously resolved that claim on the merits.

Finally, we disagree with Moncla that the limited exception to *res judicata* applies to his successive illegal-sentence claim. That exception is not, as Moncla suggests, an invitation to reexamine claims that a defendant believes were incorrectly decided.

Instead, we have simply recognized that K.S.A. 22-3504 gives a defendant "the opportunity to revisit a merits determination of legality" when the defendant can point to a "subsequent development in the law" that shows the prior merits determination "was wrong in the first instance." *Murdock*, 309 Kan. at 592. In other words, "true *changes* in the law cannot transform a once legal sentence into an illegal sentence, but developments in the law may shine new light on the original question of whether the sentence was illegal when pronounced." 309 Kan. at 592. In the latter case, we have declined to apply the doctrine of *res judicata* to a successive illegal-sentence motion.

But *Moncla* "bears a threshold burden to prove that a subsequent development in the law undermines the earlier merits determination." 309 Kan. at 592. "A successive motion that merely seeks a 'second bite' at the illegal sentence apple is susceptible to dismissal according to our longstanding, common-law preclusionary rules." 309 Kan. at 592-93. Here, *Moncla* points to *State v. Hall*, 298 Kan. 978, 986, 319 P.3d 506 (2014), where our court outlined the appropriate procedure for ordering restitution, as a subsequent development in the law undermining our earlier merits determination of legality. But in *Moncla*'s prior appeal, we held that jurisdiction was proper because the district court had satisfied "'the spirit, if not the letter'" of *Hall*'s procedures. *Moncla*, 301 Kan. at 554 (quoting *Frierson*, 298 Kan. at 1021). So *Moncla* has not met his burden to show that a development in the law has undermined our prior decision.

Because the doctrine of *res judicata* bars *Moncla*'s successive claim, we affirm the district court's summary denial of his illegal-sentence motion.

Judgment of the district court is affirmed.