

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2023 IL App (4th) 210690-U

NO. 4-21-0690

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

March 22, 2023

Carla Bender

4<sup>th</sup> District Appellate Court, IL

FREDERICK KIZER,	)	Appeal from the
Petitioner-Appellant,	)	Circuit Court of
v.	)	Brown County
CAMERON WATSON, in His Official Capacity as	)	No. 19MR30
Warden of the Western Illinois Correctional Center,	)	
Respondent-Appellee.	)	Honorable
	)	Roger B. Thomson,
	)	Judge Presiding.

PRESIDING JUSTICE DeARMOND delivered the judgment of the court. Justices Cavanagh and Doherty concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court’s dismissal of petitioner’s state *habeas corpus* complaint was proper because (1) petitioner failed to state a claim cognizable under article 10 of the Code of Civil Procedure (735 ILCS 5/10-101 *et seq.* (West 2018)) and (2) petitioner’s claim was barred under the doctrine of collateral estoppel since the claim was rejected in prior collateral proceedings that resulted in a final judgment.

¶ 2 Petitioner, Frederick Kizer, is an inmate housed at the Western Illinois Correctional Center pursuant to a judgment of conviction entered by the circuit court of Cook County in 1995. In November 2019, petitioner filed a *habeas corpus* complaint in the circuit court of Brown County, alleging the trial judge lacked jurisdiction to impose consecutive sentences for his 1995 convictions because the indictment did not allege he caused severe bodily injury and, therefore, the judgment was void. See 735 ILCS 5/10-101 *et seq.* (West 2018). The circuit court dismissed the complaint, finding, *inter alia*, petitioner’s claim was barred by

collateral estoppel—having been previously rejected by both the Illinois appellate court in *People v. Kizer*, 318 Ill. App. 3d 238, 741 N.E.2d 1103 (2000), and the federal district court in *United States ex rel. Kizer v. Walls*, No. 02-C-3400, 2004 U.S. Dist. LEXIS 5459 (N.D. Ill. Apr. 1, 2004).

¶ 3 Petitioner appeals, arguing the circuit court lacked subject matter jurisdiction “to make a factual finding at sentencing that the jury did not consider to reach its verdict.” Petitioner further argues the sentencing judge considered “improper factors” when imposing consecutive sentences; namely, the finding of “severe bodily injury.” We affirm.

¶ 4 I. BACKGROUND

¶ 5 In 1995, petitioner was convicted in the circuit court of Cook County of one count of first degree murder, three counts of attempted murder, and two counts of aggravated battery. He received consecutive sentences totaling 100 years in the Illinois Department of Corrections (IDOC). The consecutive sentences were based on the circuit court’s finding petitioner caused severe bodily injury. See 730 ILCS 5/5-8-4(a) (West 1994). Petitioner’s discharge date, according to the State’s search of public records, is April 10, 2043. See IDOC website available at <https://www.idoc.state.il.us/subsections/search/ISinms2.asp> (last visited March 9, 2023); *People v. Johnson*, 2021 IL 125738, ¶ 54, 182 N.E.3d 728 (explaining courts may take judicial notice of records on IDOC website). On direct appeal, petitioner’s conviction and sentence were upheld in *People v. Kizer*, 289 Ill. App. 3d 1134, 713 N.E.2d 831 (1997) (table) (unpublished order under Supreme Court Rule 23).

¶ 6 Petitioner then filed a postconviction petition attacking his sentence in October 1998, which the circuit court dismissed at the first stage as frivolous and patently without merit. See 725 ILCS 5/122-2.1(a)(2) (West 1998). Appealing the dismissal, petitioner raised for the

first time a challenge to the propriety of his sentence, arguing the circuit court erred in imposing a consecutive, rather than concurrent, sentence. After initially disposing of the appeal in an unpublished order, , the First District, upon petitioner’s petition for rehearing, denied the petition, finding petitioner’s sentence was not unconstitutional at the time imposed and did not violate *Apprendi v. New Jersey*, 530 U.S. 466 (2000). See *Kizer*, 318 Ill. App. 3d at 252. In rejecting petitioner’s jurisdictional claim, the appellate court held, “[t]he trial court had jurisdiction of the parties and the subject matter, as well as the authority to sentence [petitioner] to consecutive terms.” *Kizer*, 318 Ill. App. 3d at 242.

¶ 7 The Illinois Supreme Court denied petitioner’s petition for leave to appeal the appellate court’s judgment, affirming the denial of postconviction relief (see *People v. Kizer*, 195 Ill. 2d 588, 755 N.E.2d 480 (2001) (table) (unpublished order under Supreme Court Rule 23)), and petitioner’s petition for writ of *certiorari* was denied by the United States Supreme Court in *Kizer v. Illinois*, 534 U.S. 1029 (2001). Petitioner was then unsuccessful in seeking federal *habeas corpus* relief on the basis his consecutive sentences were unlawful. See *Walls*, No. 02-C-3400, 2004 U.S. Dist. LEXIS 5456 (N.D. Ill. Apr. 1, 2004), *rev’d in part on other grounds*; *Kizer v. Uchtman*, 165 Fed. App’x 465 (7th Cir. 2006).

¶ 8 Petitioner filed a *pro se habeas corpus* petition in the circuit court of Brown County in November 2019, alleging the trial judge lacked jurisdiction to impose consecutive sentences due to a failure of the indictment to allege he caused “severe bodily injury.” Petitioner contended, because of the defective indictment, the circuit court lacked authority to impose consecutive sentences, and the judgment of conviction was therefore void. Although the State first sought dismissal of the petition by way of a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2018)), the parties eventually

agreed to proceed to a hearing on the merits of the petition. The circuit court dismissed the petition, concluding petitioner's claim was barred by collateral estoppel since it had been previously rejected by both state and federal courts. In response to petitioner's argument regarding the defective indictment, the circuit court also found similar due process claims had already been raised unsuccessfully in both the United States and Illinois Supreme Courts.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, petitioner questions whether the circuit court had the required subject matter jurisdiction to make a factual finding at sentencing (the severe bodily injury finding) that was never presented to the jury for consideration to reach its verdict. Petitioner further argues the sentencing judge considered "improper factors" when imposing consecutive sentences; namely, the finding of "severe bodily injury."

¶ 12 A. Standard of Review

¶ 13 We review the denial of a *habeas corpus* petition *de novo* and may affirm for any reason appearing in the record, regardless of the basis used by the circuit court. *Ragel v. Scott*, 2018 IL App (4th) 170322, ¶ 19, 99 N.E.3d 610.

¶ 14 B. *Habeas Corpus* Relief

¶ 15 "*Habeas corpus* relief is available *only* for the reasons specified in section 10-124 of the Code \*\*\*. [Citation.] *Habeas corpus* relief is not available for other errors, even if an alleged error involves a denial of a constitutional right." (Emphasis in original.) *Ragel*, 2018 IL App (4th) 170322, ¶ 17 (citing *Beacham v. Walker*, 231 Ill. 2d 51, 58, 896 N.E.2d 327, 332 (2008)). Bases for *habeas corpus* relief fall under two general categories: (1) where a prisoner is incarcerated under a judgment of a court lacking jurisdiction of the subject matter or person of

the petitioner or (2) where something has occurred since the prisoner's conviction entitling him to release. *Hennings v. Chandler*, 229 Ill. 2d 18, 30, 890 N.E.2d 920, 927 (2008).

¶ 16 A *habeas corpus* petition is not an appropriate means of addressing nonjurisdictional claims, such as those raised here, which are only couched in jurisdictional terms. See *Adcock v. Snyder*, 345 Ill. App. 3d 1095, 1098, 804 N.E.2d 141, 143 (2004). Here, petitioner's jurisdictional claims are based on his oft-repeated argument he received improper or unconstitutional consecutive sentences because the element of "severe bodily injury" was not presented to the jury for their consideration. Regardless of how he frames it, he attacks his consecutive sentences. Such claims "are simply not cognizable under [the *Habeas Corpus* Act]." *Schlemm v. Cowan*, 323 Ill. App. 3d 318, 321, 752 N.E.2d 647, 649 (2001). The same would be true even if his claims of an unconstitutional sentence were valid. See *People ex rel. Bright v. Twomey*, 4 Ill. App. 3d 365, 368, 279 N.E.2d 538, 540 (1972).

¶ 17 1. *Subject Matter Jurisdiction*

¶ 18 Petitioner misinterprets subject matter jurisdiction. "Subject matter jurisdiction refers to a court's power to hear and determine cases of the general class to which the proceeding in question belongs." (Internal quotation marks omitted.) *In re Estate of Martin*, 2020 IL App (2d) 190140, ¶ 38, 172 N.E.3d 1176. "[A] circuit court's subject matter jurisdiction is conferred entirely by our state constitution." (Internal quotation marks omitted.) *Martin*, 2020 IL App (2d) 190140, ¶ 38. "Under section 9 of article VI of the Illinois Constitution, the jurisdiction of circuit courts extends to all 'justiciable matters except when the Supreme Court has original and exclusive jurisdiction \*\*\*.'" *Martin*, 2020 IL App (2d) 190140, ¶ 39 (quoting Ill. Const. 1970, art. VI, § 9). Because petitioner was charged with committing criminal offenses in the state, the circuit court possessed subject matter jurisdiction. See *People v. Woodall*, 333 Ill. App. 3d 1146,

1156, 777 N.E.2d 1014, 1022 (2002) (explaining a circuit court acquires subject matter jurisdiction when the State creates a justiciable controversy by filing criminal charges with the court). Further, petitioner’s claimed defect in the indictment does not operate to divest the circuit court of subject matter jurisdiction. See *People v. Hughes*, 2012 IL 112817, ¶ 27, 983 N.E.2d 439 (stating a charging instrument which fails to charge an offense does not deprive the circuit court of jurisdiction).

¶ 19

## 2. *Postconviction Occurrence*

¶ 20 As the State correctly observes, petitioner also fails to allege a postconviction occurrence warranting his immediate release. A defect in the charging instrument and imposition of consecutive sentences are both preconviction occurrences. In *People v. Woods*, 193 Ill. 2d 483, 489, 739 N.E.2d 493, 496 (2000), our supreme court concluded the “date of conviction,” for purposes of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2018)), meant “the date that final judgment including sentence was entered.” The Act is intended to provide a remedy for violations occurring at trial or sentencing. *Woods*, 193 Ill. 2d at 489. It further contemplates the filing of one petition in which a petitioner would raise all possible constitutional issues relating to either trial or sentencing or both—something which could only occur after a sentence was entered. See *Woods*, 193 Ill. 2d at 489. This is consistent with the type of postconviction event necessary to trigger application of *habeas corpus*—an occurrence “subsequent to the prisoner’s conviction.” *Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430, 704 N.E.2d 350, 351 (1998). We find the supreme court’s definition in *Woods* equally applicable here.

¶ 21

Petitioner’s claims are not properly cognizable for *habeas corpus* relief. The circuit court had subject matter jurisdiction, petitioner did not allege a postconviction occurrence

entitling him to relief, and his attack on consecutive sentencing does not state a proper claim for *habeas corpus* relief.

¶ 22 C. Collateral Estoppel

¶ 23 Lastly, the circuit court properly found petitioner’s complaint was barred by collateral estoppel. Collateral estoppel is an equitable doctrine barring relitigation of issues already decided in a previous case. “The three requirements for the application of collateral estoppel are that:

‘(1) the issue decided in the prior adjudication is identical with the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication.’ ” *Hurlbert v. Charles*, 238 Ill. 2d 248, 255, 938 N.E.2d 507, 512 (2010) (quoting *Gumma v. White*, 216 Ill. 2d 23, 38, 833 N.E.2d 834, 843 (2005)).

¶ 24 Application of the doctrine “promotes fairness and judicial economy by preventing the relitigation of issues that have already been resolved in earlier actions.” *DuPage Forklift Service, Inc. v. Material Handling Services, Inc.*, 195 Ill. 2d 71, 77, 744 N.E.2d 845, 849 (2001). Collateral estoppel bars a claim that was resolved against a petitioner on the merits in a prior proceeding as long as the prior judgment was final. *Gumma*, 216 Ill. 2d at 38.

¶ 25 In *Kizer*, 318 Ill. App. 3d at 240, petitioner, appealing from the circuit court’s dismissal of his *pro se* postconviction petition, claimed his 10- and 15-year consecutive sentences were improper because they were not statutorily compliant and were void as unconstitutional under *Apprendi*. Although the State conceded and the appellate court agreed

with the statutory noncompliance of one of the consecutive sentences, the appellate court also found the application of the enhancing factor of “severe bodily injury” was not unconstitutionally applied to petitioner. *Kizer*, 318 Ill. App. 3d at 242. Further, the appellate court specifically found, “[t]he trial court had jurisdiction of the parties and the subject matter, as well as the authority to sentence [petitioner] to consecutive terms.” *Kizer*, 318 Ill. App. 3d at 242. This judgment became final when the Illinois Supreme Court denied petitioner’s petition for leave to appeal. See *Kizer*, slip order at 588.

¶ 26 Petitioner’s later effort to relitigate his claims of error in the imposition of consecutive sentences was denied when he sought relief by way of federal *habeas corpus* in *Walls*, No. 02-C-3400, 2004 U.S. Dist. LEXIS 5459 (N.D. Ill., Apr. 1, 2004). Here, too, he alleged the issue of what constituted “severe bodily injury” was improperly decided by the trial judge rather than the jury. *Walls*, No. 02-C-3400, 2004 U.S. Dist. LEXIS 5459, at 7. The federal district court concluded the state appellate decision was proper and plaintiff’s claim was meritless. *Walls*, No. 02-C-3400, 2004 U.S. Dist. LEXIS 5459, at 19-20.

¶ 27 Accordingly, the identical issues involving the same parties have been raised by petitioner previously. They have been decided, and a final judgment has been entered against petitioner. The doctrine of collateral estoppel bars relitigating petitioner’s claim his sentence was void because the issue of “severe bodily injury” was improperly decided by the circuit court rather than the jury.

¶ 28 III. CONCLUSION

¶ 29 For the reasons set forth above, we affirm the circuit court’s judgment dismissing petitioner’s *habeas corpus* complaint.

¶ 30 Affirmed.