

## 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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Shane Querry,  
*Appellant-Petitioner,*

v.

State of Indiana and Dushan  
Zatecky,  
*Appellees-Respondents.*

September 20, 2021

Court of Appeals Case No.  
21A-MI-782

Appeal from the Putnam Superior  
Court

The Honorable Charles D. Bridges,  
Judge

The Honorable Melinda Jackman-  
Hanlin, Magistrate

Trial Court Cause No.  
67D01-2002-MI-94

**Riley, Judge.**

## STATEMENT OF THE CASE

[1] Appellant-Petitioner, Shane Query (Query), appeals the post-conviction court's denial of his petition for post-conviction relief.

[2] We affirm.

## ISSUES

[3] Query presents this court with three issues, one of which we find dispositive and which we restate as: Whether Query's petition is barred by *res judicata*.

## FACTS AND PROCEDURAL HISTORY

[4] In June of 2005, Query received a twenty-year sentence for burglary under Cause No. 71D01-0507-FB-74. He was released on July 11, 2012. Two months later, on September 17, 2012, Query was arrested for, and charged with, auto theft under Cause No. 71D02-1208-FD-765, for which he was sentenced to thirty months, with 117 days of jail time credit.

[5] On April 22, 2014, Query was again released on parole for the burglary offense. On October 15, 2014, he violated his parole by committing theft/receiving stolen property and was charged under Cause No. 50D01-1410-F5-50. His parole was revoked in February 2015.

[6] On July 9, 2015, Query filed his petition for post-conviction relief, asserting that his parole had been illegally revoked in February 2015, because he had been discharged from the burglary sentence by the parole board. On February 10, 2016, the post-conviction court denied the petition and held that "[t]he

evidence placed before the court, including the attachments to the petition, do not show that the Parole Board had discharged [Query] from his [b]urglary sentence. Nor was any claim made that [Query's] period of parole had expired.” (Appellee’s App. Vol. I, p. 2). On June 28, 2017, the court of appeals dismissed with prejudice Query’s attempt to appeal that order. *See Query v. State*, 71A05-1609-PC-02044 (June 28, 2017).

[7] On May 16, 2017, Query filed a Verified Petition for Writ of Habeas Corpus, again asserting that his parole was illegally revoked in 2015 because he had been discharged from the burglary sentence. The trial court denied that petition on July 12, 2017.

[8] On February 20, 2020, Query filed a second Verified Petition for Writ of Habeas Corpus. On February 4, 2021, Query filed a motion for default judgment, which the post-conviction court took under advisement pending a pretrial conference.<sup>1</sup> On March 17, 2021, the State and Dushan Zatecky, warden of the Putnamville Correctional Facility, as respondents (collectively, State), filed a motion for summary disposition. In the motion, the State claimed, in part, that Query’s petition for Writ of Habeas Corpus should be characterized as a petition for post-conviction relief and that his cause was

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<sup>1</sup> Query also argues that the trial court erred by taking his motion for default judgment under advisement, claiming that the trial court should have ruled on it when the motion was filed. We find his argument misguided. While courts have discretion to enter a default judgment in accordance with Ind. Trial Rule 55, the entry of a default judgment is never mandatory. *See* Ind. T.R. 55(A) (“the party *may* be defaulted by the court”) (emphasis added).

barred by the doctrine of *res judicata*. The following day, March 18, 2021, the post-conviction court granted the State’s motion and denied Query’s petition for post-conviction relief. On April 12, 2021, Query filed a motion to correct error, which was denied by the post-conviction court two days later, on April 14, 2021.

[9] Query now appeals. Additional facts will be provided if necessary.

## **DISCUSSION AND DECISION**

[10] As Query is appealing from the denial of his petition for post-conviction relief, we observe that post-conviction proceedings do not grant a petitioner a “super-appeal” but are limited to those issues available under the Indiana Post-Conviction Rules. *See* Ind. Post-Conviction Rule 1(1). Post-conviction proceedings are civil in nature, and petitioners bear the burden of proving their grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5). A petitioner who appeals the denial of post-conviction relief faces a rigorous standard of review, as the reviewing court may consider only the evidence and the reasonable inferences supporting the judgment of the post-conviction court. *Massey v. State*, 955 N.E.2d 247, 253 (Ind. Ct. App. 2011). The appellate court must accept the post-conviction court’s findings of fact and may reverse only if the findings are clearly erroneous. *Id.* If a post-conviction relief petitioner was denied relief, he or she must show that the evidence as a whole leads unerringly and unmistakably to an opposite conclusion than that reached by the post-conviction court. *Id.*

[11] Initially we note that while Query's petition filed with the trial court was labeled as a petition for Writ of Habeas Corpus, the trial court properly characterized and treated the petition as one for post-conviction relief because the petition is phrased as a challenge to Query's parole. *See Hardley v. State*, 893 N.E.2d 740, 743 (Ind. Ct. App. 2008) (holding that petition for Writ of Habeas Corpus attacking validity of parole should have been styled and treated as a petition for post-conviction relief).

[12] This is Query's third petition for post-conviction relief. In each petition, he asserted that his parole had been illegally revoked in February 2015 because the parole board had discharged him from the burglary sentence. *Res judicata* serves to prevent repetitious litigation of disputes which are essentially the same. *MicroVote General Corp. v. Ind. Election Comm'n*, 924 N.E.2d 184, 191 (Ind. Ct. App. 2010). The doctrine of *res judicata* consists of two distinct components: claim preclusion and issue preclusion. *Dawson v. Estate of Ott*, 796 N.E.2d 1190, 1195 (Ind. Ct. App. 2003). Claim preclusion applies when a final judgment on the merits has been rendered in a prior action, and it acts to bar a subsequent action on the same claim between the same parties. *MicroVote*, 924 N.E.2d at 191. Claim preclusion applies when the following four factors are satisfied:

- 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 could have been, determined in the prior action; and 4) the controversy adjudicated in the former action must have been between the parties to the present suit or their privies.

*Id.* The doctrine of *res judicata* is applicable to post-conviction cases. *Ben-Yisrayl v. State*, 738 N.E.2d 253, 258 (Ind. 2000).

[13] We conclude that Query's claim is barred by the claim preclusion prong of *res judicata*. Query's July 9, 2015, petition for post-conviction relief, asserting that his parole had been illegally revoked in February 2015 because he had been discharged from the burglary sentence by the parole board, was denied by the post-conviction court on February 10, 2016, for lack of evidence establishing the discharge. On June 28, 2017, the court of appeals dismissed with prejudice Query's attempt to appeal that order. *See Query v. State*, 71A05-1609-PC-02044 (June 28, 2017).

[14] On May 16, 2017, Query filed a Verified Petition for Writ of Habeas Corpus, again asserting that his parole was illegally revoked in 2015 because he had been discharged from the burglary sentence. The trial court denied that petition on July 12, 2017. The current petition—originally filed as a Writ for Habeas Corpus but characterized by the trial court as a petition for post-conviction relief—was filed on February 20, 2020, and asserted for a third time that his parole had been illegally revoked. All these petitions were filed between the same parties and the first two cases were decided on the merits, finding that there was no evidence to support Query's allegation. The first trial court's decision was appealed and this court dismissed the appeal with prejudice. All three petitions advanced identical facts, claims, and case law. Accordingly, as Query's claim has been litigated before and a judgment was rendered, his

current identical claim is now barred for our review by the doctrine of *res judicata*.<sup>2</sup>

## CONCLUSION

[15] Based on the foregoing, we conclude that Query's claim is barred by the doctrine of *res judicata*.

[16] Affirmed.

[17] Najam, J. and Brown, J. concur

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[1] <sup>2</sup> We also note that where a petitioner has previously filed a petition for post-conviction relief, the petitioner must first seek and obtain permission from the Indiana court of appeals before filing a successive petition for post-conviction relief. See *Young v. State*, 888 N.E.2d 1255, 1257 (Ind. 2008). Where no such permission has been obtained, the successive petition must be dismissed. *Love v. State*, 52 N.E.3d 937 (Ind. Ct. App. 2016). Query never requested nor received such permission.