

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000488-MR

RUBEN R. SALINAS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 18-CI-01095

COMMISSIONER OF THE DEPARTMENT
OF CORRECTIONS OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CALDWELL, JONES, AND TAYLOR, JUDGES.

CALDWELL, JUDGE: The Appellant, Ruben Rios Salinas, an inmate at the Kentucky State Penitentiary, appeals from the Franklin Circuit Court's opinion and order entered February 26, 2019, dismissing his petition for declaration of rights, wherein he sought additional jail-time credit towards his life sentence. The trial

court denied the relief sought because it determined that the doctrine of *res judicata* applied as Mr. Salinas had previously sought jail-time credit for the same time served which was denied in 2015. Mr. Salinas did not initiate an appeal of that denial by the Fayette Circuit Court.

BACKGROUND AND FACTS

Mr. Salinas was convicted of murder, kidnapping, and being a persistent felony offender in the second degree by a Fayette County jury in 1999. He was originally sentenced to life without parole, but that sentence was reversed on appeal in favor of a life sentence, making Mr. Salinas eligible for parole consideration after he had served twenty years via KRS¹ 439.3401(2). Mr. Salinas filed a motion in the Fayette Circuit Court in 2015 (Case No. 98-CR-01270) seeking service credit for some 450 days, but the trial court denied the motion, finding that Mr. Salinas had already received credit for those 450 days when they were applied to another, prior conviction—one for trafficking in marijuana in excess of five pounds in 1996. (Case No. 96-CR-00052.) Mr. Salinas attempted to appeal that determination, but his appeal was dismissed by this Court for failure to file a timely notice of appeal.² Discretionary review of that dismissal was also denied by the Kentucky Supreme Court.

¹ Kentucky Revised Statutes.

² Case No. 2015-CA-001126-MR.

Mr. Salinas then filed a petition for declaration of rights in the Franklin Circuit Court seeking the same relief against the Kentucky Department of Corrections. The Franklin Circuit Court dismissed the petition, holding that the principle of *res judicata* prohibited Mr. Salinas from seeking from that court what he had sought in the Fayette Circuit Court. Specifically, the Franklin Circuit Court held:

This present action filed by Petitioner is against the Kentucky Department of Corrections and the action filed in Fayette Circuit Court was against the Commonwealth of Kentucky. Petitioner contends that this means that the parties are not the same. Respondent and the Court disagree with Petitioner's stance. The Kentucky Department of Corrections is a department of the Commonwealth of Kentucky, which makes the parties in both of Petitioner's lawsuits the same. Next, Petitioner is seeking to have the same jail time credit applied by this Court as he sought from the Fayette Circuit Court. Finally, the Fayette Circuit Court matter was decided on the merits. Petitioner filed his Petition in Fayette Circuit Court on May 26, 2015, suing the Commonwealth of Kentucky, requesting the same jail time credits be applied to his sentence. Fayette Circuit Court dismissed Petitioner's case on May 28, 2015, and denied Petitioner's Motion to Reconsider on June 11, 2015. The Kentucky Court of Appeals dismissed Petitioner's appeal as untimely on August 11, 2016, and the Kentucky Supreme Court denied discretionary review on June 8, 2017. Thus, the Fayette Circuit Court's decision stands as a final decision on the merits.

(Franklin Circuit Court Opinion and Order, February 26, 2019.)

Mr. Salinas now argues that the Franklin Circuit Court incorrectly found that the doctrine of *res judicata* applied as he continues to insist that there is not the identity of parties necessary for application of the doctrine as he was proceeding against the Commonwealth of Kentucky in Fayette County and against the Department of Corrections in this action.

The doctrine of *res judicata* has been described by the Kentucky Supreme Court:

Substantively, *res judicata* applies to bar consideration of a claim that was, or could have been, brought in prior litigation between the parties. This “elementary” rule has been long-honored in Kentucky jurisprudence.

The rule is elementary that, when a matter is in litigation, parties are required to bring forward their whole case; and ‘the plea of *res judicata* applies not only to the points upon which the court was required by the parties to form an opinion and pronounce judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.’ *Davis v. McCorkle*, 77 Ky. [14 Bush] 746 (1879); *Williams v. Rogers*, 77 Ky. [14 Bush] 776 (1879); *Hardwicke v. Young*, [110 Ky. 504] 62 S.W. 10 (1901).

Bowling v. Kentucky Dep’t of Corr., 301 S.W.3d 478, 486 (Ky. 2009), *as corrected* (Jan. 4, 2010) (citation omitted).

Mr. Salinas is not the first to suggest that his claim escapes the clutches of *res judicata* because he has named a different department of government within this state as defendant. It is not singular identity that draws an entity within the umbrella of “identity of parties” necessary for application of *res judicata*, but whether the differently identified parties are “privies” one to another: “a judgment on the merits in a prior suit involving the same parties or their privies bars a subsequent suit based upon the same cause of action.” *City of Louisville v. Louisville Professional Firefighters Ass’n, Local Union No. 345, IAFF, AFL-CIO*, 813 S.W.2d 804, 806 (Ky. 1991) (citation omitted); *see also Napier v. Jones By and Through Reynolds*, 925 S.W.2d 193, 195 (Ky. App. 1996).

The Franklin Circuit Court correctly determined that Mr. Salinas’ action must be dismissed as it is a successive litigation of an already determined matter, sharing identity of parties and claims. For the foregoing reasons, the opinion and order of the Franklin Circuit Court is affirmed.

TAYLOR, JUDGE, CONCURS.

JONES, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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