

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: MARCH 30, 2012)

WILLIAM B. WINTERS

:

VS.

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C.A. No. PM/2007-2411

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STATE OF RHODE ISLAND

:

DECISION

RUBINE, J. This matter is before the Court on remand by order of the Supreme Court dated January 6, 2011. The Supreme Court’s remand direction was as follows: to address whether the claim set forth in Applicant William B. Winters’s (“Winters”) fourth application for post-conviction relief is barred under the doctrine of res judicata.

I

Facts and Travel

In 1983, Winters was convicted by a jury of seventeen counts of first- and second-degree sexual assault against children and sentenced to fifty years, ten years suspended. He appealed his conviction to the Supreme Court, and that Court denied his appeal on October 15, 1984. In 1989, Winters filed an application for post-conviction relief in accordance with R.I.G.L. § 10-9.1-1. That application was granted in part, and two of his convictions and the sentences imposed for them were vacated based upon the age determination formulae conducted with regard to §§ 11-37-4 and 11-37-5. See State v. Winters, 1995 R.I. Super. LEXIS 162.

Winters filed a second application for post-conviction relief in 2004, on the grounds that mandatory participation in the Rhode Island Department of Corrections’ (“RIDOC”) Sex Offender Treatment Program is beyond the Parole Board’s authority and constitutes a violation

of his Eighth Amendment rights. Winters claimed that the Board could not require him to engage in the program, as a condition for parole eligibility, “in addition to” a court-imposed sentence. Associate Justice Edwin Gale denied the application on January 18, 2005. Winters then filed a third application for post-conviction relief in June 2005, in which he essentially renewed his previous claim that the Parole Board had impermissibly caused him continued confinement. Associate Justice Robert Krause denied the application on September 16, 2005, finding it meritless.

In May 2007, Winters filed the instant application for post-conviction relief, his fourth effort. Winters argued that the director of RIDOC unconstitutionally revoked good-time credits due under G.L. 1956 § 42-56-24(a) without the “minimum requirements of procedural due process.” The State moved to dismiss the application on two grounds: that Winters’ claim relating to his good-time credits was barred under the doctrine of res judicata because he did not raise such a claim in any of his previous three applications, although the claim could have been asserted at the time of each of those prior applications; and the State also moved to dismiss under Rule 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure, arguing that Winters’ application failed to state a claim upon which relief could be granted, because he has no due process rights or liberty interest in the good-time credits which he claims were wrongfully denied.

Accordingly, as to this application (Winters’ fourth), this Court entered an order dated July 31, 2007 dismissing the application for failure to state a claim on the basis of Rule 12(b)(6). The Court, however, did not reach the issue of res judicata, because it was “unclear” whether the due process issues raised in this fourth application and claim of the arbitrary revocation of good-time credits were “available to [applicant] at the time of his earlier [applications for post-

conviction relief].” Thereafter, Winters appealed the dismissal to the Rhode Island Supreme Court and show cause arguments were heard on December 8, 2010.

Remand followed, by order of the Supreme Court dated January 6, 2011, in which this Court was to address the “threshold issue—whether [the] applicant’s (Winters’) claim is barred by the well-established doctrine of res judicata.” See Winters v. State of Rhode Island, 9 A.3d 662, 663 (R.I. 2011) (quoting Ferrell v. Wall, 971 A.2d 615, 619 (R.I. 2009)). The Supreme Court found that the “trial justice did not have the benefit of potentially relevant information, particularly the applicant’s inmate disciplinary report, which would indicate when the applicant’s good-time credits were denied,” a threshold issue necessary to determine the validity of the State’s res judicata theory supporting its motion to dismiss. Winters, 9 A.3d at 663. The matter was then heard for an evidentiary hearing on remand before this Court on May 17, 2011.

Accordingly, this Court’s focus on remand is limited to a determination of whether the due process violations asserted in this application were “available” to¹ Winters at the time of his filing his previous post-conviction relief applications. If the Court determines that the identical due process issues asserted in this 2007 application were equally available to the applicant at the time of his earlier applications, res judicata will bar this Court from re-litigating those due process issues.

At the hearing on remand, Winters stated for the first time that his claim related only to the denials of good-time credits from May 2005 forward, and that his due process rights were violated only from 2005 forward. During the hearing, the Court requested copies of RIDOC’s inmate disciplinary policies. The record was left open, and the State supplied the requested information to the Court and Winters.

¹ In other words “ripe for adjudication.”

The contents of these documents, and their effect on the justifiability of the due process claims, as part of Winters' earlier applications, will be provided in the Analysis portion of this Decision.

II

Standard of Review

In Rhode Island, an application for "post-conviction relief" is available to a defendant convicted of a crime who contends that his [or her] original conviction or sentence violated rights protected by the state or federal constitution. See State v. Laurence, 18 A.3d 512, 521 (R.I. 2011) (quoting Otero v. State, 996 A.2d 667, 670 (R.I. 2010)). Section 10-9.1-1(a) establishes a statutory right to post-conviction relief. It provides:

"(a) Any person who has been convicted of, or sentenced for, a crime, a violation of law, or a violation of probationary or deferred sentence status and who claims:

- (1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) That his or her sentence has expired, his or her probation, parole, or conditional release unlawfully revoked, or he or she is otherwise unlawfully held in custody or other restraint; or
- (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory, or other writ, motion, petition, proceeding, or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief." Section 10-9.1-1(a).

Post-conviction relief applications are “civil in nature.” Ferrell v. A.T. Wall, 889 A.2d 177, 184 (R.I. 2005) (quoting Quimette v. Moran, 541 A.2d 855, 856 (R.I. 1988)). As such, “[a]ll rules and statutes applicable in civil proceedings apply.” Ferrell, 889 A.2d at 184.

III

Analysis

In the instant application for post-conviction relief, Winters asserts that his sentence should have been reduced by his earning and accumulating good-time credits, for which he has a protected liberty interest under the Due Process Clause of the Fourteenth Amendment which would entitle him to procedural due process if the State denies such credits; and that the denial of good-time credits for prison misconduct violated his due process rights because he was not afforded the procedures of due process before the credits were denied. The sole issue on remand is whether Winters’ due process claim is barred by the doctrine of res judicata, given that it was raised for the first time in his fourth application for post-conviction relief.

At the hearing on remand, Winters newly asserted that his due process claim applied only to good-time credits revoked from May 2005 forward and that therefore his due process claims were unavailable to him prior to 2005. In a Stipulation of the Applicant submitted on April 11, 2011, Winters states to the Court that the revocation of good-time credits “in a manner which did not comport with the requirements of due process does not encompass any dtae (sic) prior to September 18, 2005 at this time.” Previously, Winters asserted in his fourth application that the dates applicable to the due process violations asserted herein included January 2007, September 2006, August 2005, May 2005, and September 2005, coinciding with the dates on which for disciplinary reasons good-time credits were not allowed to be earned, or were revoked, *and was not limited to those dates* (emphasis added). He thus takes the position that the due process

claims he now asserts were not ripe for adjudication at the time the previous three applications for post-conviction relief were filed. At no time has Winters amended his fourth application to narrow the time frame he now asserts in argument.

In the post-conviction relief context, res judicata is codified in Section 10-9.1-8, Waiver of or failure to assert claims,” and provides that:

“all grounds for relief available to an applicant at the time he or she commences a proceeding under this chapter must be raised in his or her original, or a supplemental or amended, application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds that in the interest of justice the applicant should be permitted to assert such a ground for relief.” Section 10-9.1-8.

See also Mattatall v. State, 947 A.2d 896, 904 (R.I. 2008). The res judicata doctrine “operates as an absolute bar to relitigation of the same issues between the same parties when a final judgment has been rendered.” Id. at 904; Carillo v. Moran, 463 A.2d 178, 182 (R.I. 1983); Miguel v. State, 924 A.2d 3, 4 (R.I. 2007). Furthermore, “[a] judgment on the merits in the first case not only is conclusive with regard to the issues that were actually determined but also precludes reconsideration of all other issues that might have been raised in the prior proceeding.” Mattatall, 947 A.2d at 904-05; Carillo, A.2d at 182; see also Miguel, 924 A.2d at 4. Section 10-9.1-8 provides a procedural bar not only to issues that have been raised and decided in a previous post-conviction relief proceeding, but also to the relitigation of any issue that could have been asserted as a ground for post-conviction relief in an earlier application. See Ferrell, 971 A.2d at 620; Quimette v. State, 785 A.2d 1132, 1138 (R.I. 2001).

For res judicata to apply, the following four elements must be established: “(1) identity of the parties; (2) identity of the issues; (3) identity of the claims for relief; and (4) finality of the judgment.” Ferrell, 971 A.2d at 620 (citing Quimette, 785 A.2d at 1138).

The first element in this four-part analysis is met because the parties in each matter are identical. In the first application for post-conviction relief, the Respondent was the director of RIDOC. In the second, third, and fourth, the Respondent was the State of Rhode Island. The director of RIDOC and the state are the same for purposes of § 10-9.1-8. See Ferrell, 971A.2d at 620 (citation omitted).

Both the second and third elements, requiring an identity of issues and an identity of claims, are met because based on the record, Winters had sufficient opportunity to raise the due process issue in at least two of his three prior post-conviction relief applications. A prior post-conviction relief denial is conclusive as to any issue that was or could have been litigated in a prior proceeding. Id.

Winters’ first application for post-conviction relief was filed in October 1989. Computerized recordkeeping of inmate disciplinary infractions was implemented in 1990; prior to 1990, these records were recorded manually. Based on the record, which petitioner does not dispute, the first date on which good-time credits were denied to Winters was May 28, 1997.² Given that the filing date of the first application was in 1989 and that the record discloses that the first occasion on which Winters was denied good-time credits was in 1997, Winters’ claims related thereto were not ripe for adjudication in his first application for post-conviction relief.

² This is not to say that it was not feasible that Winters could have been denied good-time credits prior to 1995. RIDOC’s “Code of Inmate Discipline” in effect at that time expressly provided the means by which good-time credits were to be calculated and awarded, as well as deducted for disciplinary violations. It appears as though the infractions Winters committed from 1990 to 1995 simply did not warrant denial or revocation of good-time credits.

However, Winters subsequently filed two additional applications for post-conviction relief in 2004 and in 2005. Between 1989 and 2004, the period between the filing of Winters' first and second applications for post-conviction relief, he had lost good-time credits on fifteen occasions through the identical process challenged herein. Invocation of the disciplinary rules wherein Winters was refused good-time credits occurred once more in the timeframe from the filing of the second application to the date of the filing of the third application, on June 22, 2005. Based on the record, between January 2, 1990 and May 15, 2011,³ Winters was denied good-time credits for prison misconduct on a total of thirty-seven occasions. It is thus clear that the due process claim was ripe for adjudication at the time he commenced both his second and third applications for post-conviction relief; yet he failed to assert this claim in either. His failure to raise the available due process claim in the earlier post-conviction relief applications results in a bar to the assertion of this due process claim as set forth in the instant application. See Ferrell, 971 A.2d at 621. Despite Winters' assertion that he was unable to predict the future at the time he filed his previous applications, so as to foresee that good-time credits would be denied, no such extraordinary abilities were necessary, as those credits were denied on numerous occasions throughout the period from 1995-2007. Winters could have raised the due process claim in his second or third application for post-conviction relief, based upon good-time credit denials on dates previous to both of these two applications. The identical due process claims raised herein were fully ripe for adjudication at the time he filed his second and third applications for post-conviction relief.

³ Dates Winters' Applications for Post-Conviction Relief Filed:

1. October 1989
2. 2004
3. June 2005
4. May 2007

Furthermore, Winters' assertion at the hearing on remand that his due process claims pertained only to denials of good-time credits from May 2005 forward have no impact on the availability of these claims at the time of the filing of his second and third applications for post-conviction relief. Although the instant application does not indicate this alleged temporal limitation argued by the petitioner, even if that limitation was properly set forth in the application, the RIDOC Code of Inmate Discipline was revised in January 2005 to reflect certain changes in Rhode Island prisoner rights procedure.⁴ The Code implemented in 2005 defines the process of determining allegations of misconduct and sanctions for violation of the Code, including refusal to award good-time credits as a result of the infraction.⁵ The 2005 policy, just as the RIDOC policies in effect prior to 2005, do not entitle prisoners to the requirements of procedural due process for denials of good-time credits. Thus, Winters' assertion that his due process claims apply only to denials of good-time credits after May 2005 does not affect the availability of these claims at the time of the filing of his second and third applications for post-conviction relief, as the procedures in effect at those times were substantially identical to those challenged herein.

Lastly, the fourth element of res judicata is met because a final judgment was entered in each of the three prior post-conviction relief applications. Accordingly, all four elements required for the application of the doctrine of res judicata have been satisfied.

The applicant gets one bite at the proverbial post-conviction relief apple: any issues that could have been raised in a prior application had to be raised therein, or the applicant is barred in a future post-conviction relief application from raising those omitted issues. To allow the

⁴ See e.g., L'Heureux v. Department of Corrections, 708 A.2d 549 (R.I. 1998); DeCiantis v. Wall, 795 A.2d 1121 (R.I. 2002); Doctor v. Wall, 143 F. Supp. 2d 203 (D.R.I. 2001); and Cugini v. Ventetuolo, 781 F. Supp. 107 (D.R.I. 1992).

⁵ RIDOC Policy Unit, 11.01-4 DOC; Code of Inmate Discipline; 01/04/05; page 1.

assertion of grounds for relief that were available at the time of earlier applications needlessly burdens the Court with consideration of multiple post-conviction relief applications, from the same applicant.

V

Conclusion

For the reasons set forth herein, the Applicant's instant Application for Post-Conviction Relief must be denied by application of the well-settled principles of res judicata. Based upon an expanded record, this Decision answers the question raised by the Supreme Court in the affirmative, and the Decision shall be transmitted to the Supreme Court in accordance with its earlier order of remand.