

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20050673-CA
v.)	
)	F I L E D
Louis Joseph Malek,)	(October 6, 2005)
)	
Defendant and Appellant.)	2005 UT App 429

Fourth District, Provo Department, 831408688
The Honorable Claudia Laycock

Attorneys: Louis Joseph Malek, Draper, Appellant Pro Se
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake
City, for Appellee

Before Judges Bench, Greenwood, and Thorne.

PER CURIAM:

This case is before the court on its own motion for summary disposition on the ground that the question presented for appeal is so insubstantial so as to not merit further consideration.

Louis Joseph Malek argues that his initial sentence in 1983 was illegal because the district court failed to sign the minute entry setting forth his sentence. Malek raised this same issue on a prior appeal to this court. See Malek v. Friel, 2004 UT App 237 (per curiam). In that decision, this court stated that Malek "argues that his 1983 sentence was unsigned, meaning he should be released. However, even if the initial sentence was unsigned, the sentence was corrected with the entry of the 1992 order correcting Malek's sentence, therefore mooted any initial error." Id. This court's resolution of this issue on Malek's prior appeal is res judicata with respect to this issue. See State v. Clark, 913 P.2d 360, 362 (Utah Ct. App. 1996) (concluding issue raised in prior appeal that was dismissed for lack of prosecution was an adjudication on the merits and was res judicata with respect to a subsequent appeal on the same issue).

Malek also contends that in 1983 the district court improperly imposed a "multiplicity of firearms enhancements" that effectively denied him the benefit of his plea bargain. However, in 1992, in response to Malek's Petition for Writ of Habeas

Corpus, the Third District Court ruled in his favor and amended the sentencing order by dropping three of the four enhancements. Malek did not file an appeal from this 1992 order. Any issue concerning the propriety of the 1992 order needed to be filed in an appropriate appeal following the entry of that order. Because Malek failed to raise the issue at that time, it was waived. See MacKay v. Hardy, 973 P.2d 941, 947 (Utah 1998) (concluding "issues which could have been raised in the first appeal but were not raised are waived").

Accordingly, the order of the district court is affirmed.

Russell W. Bench,
Associate Presiding Judge

Pamela T. Greenwood, Judge

William A. Thorne Jr., Judge