

NOT DESIGNATED FOR PUBLICATION

No. 125,898

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

TYRELL JACKSON,
Appellant,

v.

STATE OF KANSAS,
Appellee.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; AARON T. ROBERTS, judge. Opinion filed September 22, 2023. Affirmed.

Joseph A. Desch, of Law Office of Joseph A. Desch, of Topeka, for appellant.

Kayla Roehler, deputy district attorney, *Mark A. Dupree Sr.*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before ARNOLD-BURGER, C.J., GREEN and HILL, JJ.

PER CURIAM: Tyrell Jackson pleaded guilty to one count each of aggravated robbery, eluding a police officer, and aggravated assault of a law enforcement officer in Wyandotte County District Court. Jackson filed a direct appeal challenging procedural due process, which was denied by this court. On August 12, 2019, Jackson filed a K.S.A. 60-1507 habeas corpus motion claiming actual innocence. The Wyandotte County District Court summarily denied Jackson's K.S.A. 60-1507 motion finding that it was time-barred and the evidence presented did not show manifest injustice. On March 10, 2021, Jackson filed his present K.S.A 60-1507 motion. In this motion, Jackson claims

ineffective assistance of trial counsel, instruction error, and actual innocence. The district court denied the motion because it was untimely filed and it lacked credible evidence.

Jackson argues on appeal that the district court improperly denied his K.S.A. 60-1507 motion as untimely and improperly considered information outside the motion and affidavit in denying his motion. The State argues that the district court properly denied Jackson's 60-1507 motion because his motion was untimely. The State also argues that his motion was successive. Finally, the State argues that Jackson's 2021 K.S.A. 60-1507 motion was barred by *res judicata* because a final judgment was previously made by a court of competent jurisdiction involving the same claims and the same parties. Because *res judicata* is conclusive on the parties in any subsequent litigation involving the same claims, we affirm.

FACTS

Jackson was charged with one count each of aggravated robbery, eluding a police officer, and aggravated assault of a law enforcement officer. Jackson pleaded guilty to eluding a police officer and aggravated assault of a law enforcement officer before trial. The State proceeded to trial on the aggravated robbery charge. A jury found Jackson guilty of aggravated robbery. The district court sentenced Jackson to 216 months' imprisonment with 36 months of postrelease supervision.

Jackson appealed his sentence. On appeal, Jackson based his challenge on an incorrect legal sentence. He also argued that the district court erred in admitting evidence of prior bad acts under K.S.A. 2015 Supp. 60-455, failing to give a limiting instruction to the jury after admitting evidence of prior bad acts, not instructing the jury of a lesser offense of robbery, and limiting his cross-examination of witnesses. Jackson also contended that the State committed a *Batson* violation and that the cumulation of errors denied him of a fair trial. See *State v. Jackson*, No. 112,845, 2016 WL 6140969, at *1

(Kan. App. 2016) (unpublished opinion); see also *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986). A panel of this court disagreed with Jackson and affirmed his sentence. *Jackson*, 2016 WL 6140969, at *12. The mandate was issued on July 12, 2017.

In 2019, Jackson filed a K.S.A. 60-1507 habeas corpus motion, which was denied as untimely. In that motion, Jackson alleged that his trial counsel was ineffective for failing to contact witnesses who were outside during the incident. He maintained that these witnesses would testify that he did not possess a weapon and was by himself during the argument with the victim.

On March 10, 2021, Jackson filed his present K.S.A 60-1507 motion. In this motion, Jackson claims ineffective assistance of trial counsel, instruction error, and actual innocence, supported with an affidavit of a newly discovered witness unknown when the trial occurred. Although the witness' claims that Jackson and the victim were arguing, no robbery occurred, and there was no gun used in the incident.

The district court denied the motion because it was untimely filed and it lacked credible evidence. The district court found a previous conviction for obstructing the legal process in the criminal history of the witness. As a result, the district court questioned the credibility of the witness accounted facts. The court found no manifest injustice which would excuse the untimely filing of the motion. Jackson timely appeals.

ANALYSIS

Did the district court properly deny Jackson's second K.S.A. 60-1507 motion?

Standard of Review

When analyzing a district court's dismissal of a habeas corpus motion, the standard of review is de novo. Therefore, this court considers the motion, files, and records for the case to determine if the movant is entitled to no relief. *Beauclair v. State*, 308 Kan. 284, 293, 419 P.3d 1180 (2018).

Analysis

Jackson argues that his 2021 K.S.A. 60-1507 motion should have been reviewed by the district court because he claims that the district court considered information outside of the affidavit provided in support of his innocence, which should be considered inadmissible. He further argues that if this court finds that his 2021 K.S.A. 60-1507 claims were untimely, the motion should still be reviewed to prevent manifest injustice.

When dealing with a K.S.A. 60-1507 motion, the district court may consider three options: (1) The district court may review the motion, files, and case records to determine if the movant is entitled to no relief and deny the motions summarily; (2) in accordance with the motion, files, and record, a substantial issue exists and a preliminary hearing may be held. If the district court finds that no substantial issue exists, the district court may deny the motion; or (3) the district court may review the motion, files, records, or preliminary hearing to determine a substantial issue is present requiring a full hearing. *Sola-Morales v. State*, 300 Kan. 875, 881, 335 P.3d 1162 (2014).

When the district court denies a K.S.A. 60-1507 motion, as it did in the present case, an appellate court conducts de novo review to determine whether the motions, files,

and records of the case establish that the movant is not entitled to relief. *Beauclair*, 308 Kan. at 293.

Res Judicata

The State argues that Jackson's motion should be barred because it was untimely, successive, and barred by the doctrine of res judicata. We will address the State's res judicata argument because if Jackson's 2021 K.S.A. 60-1507 motion is barred by res judicata, this would clearly be an independent basis for denying Jackson's 2021 K.S.A. 60-1507 motion in this appeal.

Res judicata is the legal status of a cause of action and the cause of action's accompanying facts being forever settled as between the parties to the action. The rule is intended to put an end to a final decision once reached.

Where an appeal is taken from a conviction or sentence imposed, the judgment of the appellate court is res judicata as to all issues actually raised. Issues that could have been raised are deemed waived. *State v. Salary*, 309 Kan. 479, 482, 437 P.3d 953 (2019) (citing *State v. Kingsley*, 299 Kan. 896, 901, 326 P.3d 1083 [2014]); see also *State v. Martin*, 294 Kan. 638, 640-41, 279 P.3d 704 (2012) (issues raised and decided in prior 60-1507 motions or motions to correct an illegal sentence are res judicata and cannot be raised in subsequent motions).

Whether the doctrine of res judicata applies in a certain case is an issue of law over which appellate courts exercise unlimited review. *Salary*, 309 Kan. at 481.

Kansas courts will invoke res judicata to bar a successive suit where the following requirements are met: (1) the same claim; (2) the same parties; (3) the claims were or could have been raised; and (4) a final judgment on the merits. *Martin*, 294 Kan. at 641.

It is evident from this record that Jackson has continued to seek relief for the same claims that he raised in his 2019 K.S.A. 60-1507 motion proceedings. His current 2021 K.S.A. 60-1507 motion is a regurgitation of the same claims he made in his 2019 motion. Jackson has contended that two witnesses were present during the robbery in his 2019 K.S.A. 60-1507 motion and one witness was present during the robbery in his 2021 K.S.A. 60-1507 motion. He also contends that his trial counsel was ineffective concerning the two witnesses in his 2019 motion and his trial counsel was ineffective concerning the one witness in his 2021 motion. In his 2019 motion, he contended that two witnesses were outside when the incident occurred and that they could testify that no robbery had occurred and that he did not have a weapon. This evidence is much like his current evidence. He now contends that there is a witness who would say that there was no gun used during the incident. Because these claims have been previously raised and litigated involving the same parties, the same claims, the claims were or could have been raised, and with a final judgment on the merits, these claims and his 2021 K.S.A. 60-1507 motion are barred by the doctrine of res judicata.

Affirmed.