

HERBERT F. WARRENDER

v.

DEPARTMENT OF CORRECTIONS et al.

Submitted on Briefs December 18, 2020

Decided January 5, 2021

Panel: MEAD, GORMAN, JABAR, HORTON, and CONNORS, JJ.

#### MEMORANDUM OF DECISION

Herbert F. Warrender appeals from a judgment of the Superior Court (Androscoggin County, *MG Kennedy, J.*) dismissing with prejudice Warrender's complaint for negligence brought against the Department of Corrections, several associated state employees, a sergeant in the Androscoggin County Sheriff's Office, and Warrender's former attorney. The complaint alleged that the defendants' actions resulted in Warrender being deprived of time-served and good-time credits due him on a criminal sentence that he was serving as a result of a conviction for forgery (Class B), 17-A M.R.S. § 703(1)(A-1)(1) (2020).

Because the United States District Court for the District of Maine rendered a final judgment on the merits of a complaint that Warrender brought in that court asserting claims against the same governmental parties that were based on a "common nucleus of operative facts" and were therefore "sufficiently identical," *Estate of Treworgy v. Comm'r of the Dep't of Health and Human Servs.*, 2017 ME 179, ¶¶ 11-12, 169 A.3d 416 (quotation marks omitted); see *Warrender v. Me. Dep't of Corr.*, No. 2:17-cv-00101-JAW, 2017 U.S. Dist. LEXIS 55650 (D. Me. Apr. 12, 2017) (*Nivison, Mag.*), *aff'd*,

2017 U.S. Dist. LEXIS 61461 (D. Me. Apr. 24, 2017) (*Woodcock, J.*), the trial court did not err in dismissing Warrender's state complaint against those parties on the ground that it was barred by the claim preclusion branch of the res judicata doctrine. *See Estate of Treworgy*, 2017 ME 179, ¶¶ 10-11, 169 A.3d 416.

Furthermore, the court correctly dismissed Warrender's complaint against his former attorney because his claim to additional sentence credit—the central claim against all of the defendants—could only be pursued through the petition for post-conviction review that he filed in the trial court. *See State v. Bilynsky*, 2008 ME 33, ¶ 3, 942 A.2d 1234; *State v. Grip*, 2004 ME 156, ¶ 1, 863 A.2d 276; *State v. Crawford*, 2002 ME 113, ¶¶ 6-7, 801 A.2d 1002; 15 M.R.S. § 2122 (2020). Because the dismissal of that petition by the court as untimely foreclosed Warrender's further challenge to the calculation of his sentence, the court did not err in dismissing his claim against his former attorney based on a theory that Warrender was deprived of additional sentence credit by counsel's alleged negligence.

Finally, to the extent that Warrender attempts to raise challenges on appeal beyond those related to his central allegation that his sentence was incorrectly calculated, those challenges lack any developed legal argument and are deemed waived. *See Mehlhorn v. Derby*, 2006 ME 110, ¶ 11 & n.6, 905 A.2d 290.

The entry is:

Judgment affirmed.

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Herbert F. Warrender, appellant pro se

Aaron M. Frey, Attorney General, and Alisa Ross, Asst. Atty. Gen., Office of the Attorney General, Augusta, for appellees Department of Corrections et al.

Rebecca V. Brochu, Esq., Robinson, Kriger & McCallum, Portland, for appellee Stephen Brochu

John J. Wall, III, Esq., Monaghan Leahy, LLP, Portland, for appellee Martin Fournier

Androscoggin County Superior Court docket number CV-2017-63  
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