



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

June 13, 2012

To:

Hon. Timothy M. Witkowiak
Circuit Court Judge
Safety Building Courtroom, # 113
821 W. State Street
Milwaukee, WI 53233-1427

John Barrett
Clerk of Circuit Court
Room G-8
901 N. 9th Street
Milwaukee, WI 53233

Abigail Potts
Assistant Attorney General
P. O. Box 7857
Madison, WI 53707

Colleen Ball
First Asst. State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202

Civil Litigation Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Jackson Corr. Inst.
Jackson Corr. Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

Humberto Lagar 185468
Jackson Corr. Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

You are hereby notified that the Court has entered the following opinion and order:

2011AP2884

State of Wisconsin ex rel. Humberto Lagar v. Randall R. Hepp,
Warden, Jackson Correctional Institution (L.C. #2011CV12938)

Before Curley, P.J., Fine and Brennan, JJ.

Humberto Lagar, *pro se*, appeals an order dismissing his petition for writ of *habeas corpus*. The issue is whether this action is barred by claim preclusion. After reviewing the briefs and Record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

Lagar petitioned for writ of *habeas corpus*, arguing that he was being illegally held in prison because the parole commission should have released him on parole when he reached his presumptive mandatory release date. The circuit court denied the petition because Lagar raised the same issues in a petition for writ of *certiorari* decided several months before he filed the *habeas* petition.

“The doctrine of claim preclusion provides that a final judgment on the merits in one action bars parties from relitigating any claim that arises out of the same relevant facts, transactions, or occurrences.” *Kruckenbergh v. Harvey*, 2005 WI 43, ¶19, 279 Wis. 2d 520, 529, 694 N.W.2d 879, 884. “When the doctrine of claim preclusion is applied, a final judgment on the merits will ordinarily bar all matters ““which were litigated or which might have been litigated in the former proceedings.”” *Ibid.* (footnote, citation and one set of quotation marks omitted). The doctrine of claim preclusion has three elements. *Id.*, 2005 WI 43, ¶21, 279 Wis. 2d at 531, 578 N.W.2d at 885. There must be “identity between the parties or their privies in the prior and present suits,” the prior litigation must have “resulted in a final judgment on the merits by a court with jurisdiction,” and there must be “identity of the causes of action in the two suits.” *Ibid.* (citation omitted).

This action meets all of the elements of claim preclusion. Lagar is the petitioner in both actions and the respondent to each petition is an employee of the Department of Corrections. Lagar’s present *habeas* action and his previous *certiorari* action both arose from the parole commission’s decision denying Lagar parole. The previous *certiorari* action was decided on the merits by a final order of the circuit court. Lagar’s *habeas* petition is thus barred by claim preclusion.

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals