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July 7, 2015

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

2014AP2264

State of Wisconsin v. Demetrice D. Keith (L.C. #2003CF7288)

Before Kessler, Brennan and Bradley, JJ.

Demetrice D. Keith, *pro se*, appeals a circuit court order denying his motion for postconviction relief filed under WIS. STAT. § 974.06 (2013-14).¹ Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). Keith's current claims are barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Therefore, we summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Keith pled guilty to two counts of second-degree intentional homicide as a party to a crime.² The circuit court imposed two, concurrent, sixty-year terms of imprisonment. With the assistance of appointed postconviction counsel, Keith sought plea withdrawal and then appealed the judgment of conviction and the adverse postconviction order. We affirmed. *See State v. Keith*, No. 2006AP869-CR, unpublished slip op. (WI App Apr. 17, 2007).

Keith next filed the postconviction motion underlying the instant appeal. He claimed that his pleas were invalid, the circuit court's sentencing remarks revealed bias, and his trial counsel was ineffective for failing to object to the plea bargain and to the sentencing proceedings. The circuit court determined that the claims are procedurally barred, and Keith appeals.

The postconviction procedures of WIS. STAT. § 974.06 allow a convicted offender to attack a conviction after the time for a direct appeal has expired. *See Escalona-Naranjo*, 185 Wis. 2d at 176. The opportunity to bring postconviction motions, however, is not limitless. Section 974.06(4) requires a prisoner to raise all constitutional and jurisdictional grounds for postconviction relief in his or her original, supplemental, or amended motion. *See id.*; *see also Escalona-Naranjo*, 185 Wis. 2d at 185. If a convicted offender did not raise his or her grounds for postconviction relief in a prior postconviction proceeding, or if prior litigation resolved the

² The judgment of conviction in this case indicates that Keith pled guilty to two counts of second-degree intentional homicide as a party to a crime and while armed with a dangerous weapon. The transcript of the plea hearing, however, incontrovertibly shows that a weapon enhancer was not part of either charge to which Keith pled guilty. The circuit court accepted Keith's pleas to two counts of second-degree intentional homicide as a party to a crime and subsequently sentenced him for those offenses. "[A] court has the power to correct clerical errors at any time." *State v. Prihoda*, 2000 WI 123, ¶17, 239 Wis. 2d 244, 618 N.W.2d 857. Accordingly, unless the State successfully moves this court to reconsider within twenty days after the date of this opinion, the circuit court shall, upon remittitur, correct the judgment of conviction by vacating the description of the crimes as committed while armed. *See id.*, ¶5 (stating that the circuit court may correct a clerical error in the sentence portion of a written judgment of conviction or direct the clerk's office to make the correction).

offender's claims, they may not become the basis for a subsequent postconviction motion under § 974.06 unless the offender demonstrates a sufficient reason for failing to allege or adequately raise the claims in the prior proceeding. *Escalona-Naranjo*, 185 Wis. 2d at 181-82. A court determines the sufficiency of an offender's reason for serial litigation by examining the four corners of his or her postconviction motion. *See State v. Allen*, 2004 WI 106, ¶¶9, 27, 274 Wis. 2d 568, 682 N.W.2d 433.

The postconviction motion underlying this appeal failed to include any reason, let alone a sufficient reason, that Keith did not raise or fully explore his current claims in the course of his prior postconviction litigation. Consequently, his claims are barred. *See Escalona-Naranjo*, 185 Wis. 2d at 181-82.

Therefore,

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

Diane M. Fremgen
Clerk of Court of Appeals