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**DISTRICT IV**

July 15, 2015

To:

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

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2014AP676

State of Wisconsin v. Shawn A. Beasley (L.C. # 2000CF154)

Before Lundsten, Higginbotham and Sherman, JJ.

Shawn Beasley, pro se, appeals a circuit court order denying his motion for postconviction relief under WIS. STAT. § 974.06 (2013-14),<sup>1</sup> as well as an order denying his motion to supplement and amend the original motion. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

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

Beasley was convicted, after a jury trial, of first-degree intentional homicide and several other felonies. He received a sentence of life imprisonment without parole. Beasley pursued a direct appeal and this court affirmed his convictions in *State v. Beasley*, 2004 WI App 42, 271 Wis. 2d 469, 678 N.W.2d 600. Beasley filed a petition for review, which was denied. He then filed a petition for writ of habeas corpus on the grounds of ineffective assistance of appellate counsel under *State v. Knight*, 168 Wis. 2d 509, 520, 484 N.W.2d 540 (1992), which this court denied. Beasley petitioned for review of our order denying the writ, which was denied.

This appeal concerns a WIS. STAT. § 974.06 motion filed by Beasley in the circuit court on September 23, 2013. In the motion, he alleged that his trial counsel was ineffective for failing to object to the jury instructions read at his trial. Beasley also argued that he was entitled to a new trial based upon newly discovered evidence. On January 31, 2014, the circuit court entered an order denying Beasley's motion without a hearing. Beasley then moved to supplement and amend the postconviction motion, and the court denied this motion in an order entered on March 19, 2014. Beasley now appeals both the January 31 and March 19, 2014 orders.

We will first address Beasley's argument regarding the jury instructions. Beasley acknowledges in his appellant's brief that this is his third postconviction challenge and that he did not previously raise the jury instruction issue, nor did he claim that his trial counsel was ineffective for failing to raise it. The State argues that these claims are, therefore, procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We agree.

“[A]ny claim that could have been raised on direct appeal or in a previous Wis. Stat. § 974.06 ... postconviction motion is barred from being raised in a subsequent § 974.06 postconviction motion, absent a sufficient reason.” *State v. Lo*, 2003 WI 107, ¶2, 264 Wis. 2d 1,

665 N.W.2d 756 (footnote omitted); *see also Escalona-Naranjo*, 185 Wis. 2d at 184. Beasley asserts that, as a lay person untrained in law, he only recently became aware of the potential jury instruction issue. However, the trial at which the jury instruction was given occurred in 2001 and, since then, Beasley has pursued a direct appeal as well as a *Knight* petition. The postconviction motion at issue in this case was filed in 2013. Beasley's unawareness of the potential jury instruction issue is not a sufficient reason for his failure to raise this issue on direct appeal. As succinctly stated by our supreme court in *Escalona-Naranjo*, "[w]e need finality in our litigation." *Id.*, 185 Wis. 2d at 185. We conclude that Beasley's claim regarding the jury instruction and the ineffective assistance claim related to it are barred by *Escalona-Naranjo*.

We turn next to Beasley's argument regarding newly discovered evidence. Beasley alleged in his postconviction motion that, sometime after his conviction and sentencing, he received a sworn statement from Jamaica Wilson, in which Wilson admitted that a statement he gave to police on January 29, 2000, about Beasley was false. Beasley also alleged that Wilson had admitted to two other people, Terrance Prude and Tingia Wheeler, that he set Beasley up. Beasley attached affidavits made by Prude and Wilson to his motion, as well as a signed statement by Wheeler.

A defendant who seeks a new trial based on newly discovered evidence must prove, by clear and convincing evidence, that: "(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking the evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative." *State v. McCallum*, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997). We need not address each of the four prongs of Beasley's newly discovered evidence claim because he fails to satisfy the second element; that is, Beasley fails to prove that he was not negligent in seeking the evidence.

The postconviction motion does not specify when Beasley learned about Wilson's admissions. Prude's affidavit provides that Wilson's admissions were made to him in 2006-2007. Wheeler's statement provides that Wilson's admissions were made to him in 2007-2008. Neither the motion nor the attached materials explain when, where, and by whom the information about Wilson was conveyed to Beasley. Beasley does not explain what steps he took to discover the evidence, nor does he explain why he did not seek the evidence out earlier and bring it to the attention of either the trial court or this court in his previous postconviction challenges. Because Beasley has failed to establish by clear and convincing evidence that he was not negligent in seeking the evidence of Wilson's admissions, he cannot prevail on his motion for a new trial, such that the circuit court properly denied it.

IT IS ORDERED that the orders are summarily affirmed under WIS. STAT. RULE 809.21(1).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*