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DISTRICT II

April 6, 2016

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

2015AP1506

State of Wisconsin v. Aaron K. Claybrook (L.C. #1992CF411)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Aaron K. Claybrook appeals pro se from an order denying his motion for postconviction relief. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2013-14).¹ We affirm the order of the circuit court.

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

In 1993, Claybrook was convicted following a jury trial of first-degree intentional homicide while using a dangerous weapon as party to the crime. The circuit court sentenced him to prison for life. Claybrook appealed.

In 1995, this court affirmed Claybrook's conviction. *State v. Claybrook*, No. 1994AP1057-CR, unpublished slip op. (WI App Nov. 15, 1995). In doing so, we rejected his claim that he was denied a fair trial because he was shackled at the ankles throughout trial. *Id.* at 2.

Almost twenty years later, Claybrook filed a motion for postconviction relief pursuant to WIS. STAT. § 974.06. In it, he argued that his postconviction counsel was ineffective in three respects: (1) for failing to allege that trial counsel was ineffective for failing to request a jury instruction regarding the use of shackles during trial, (2) for failing to allege that the circuit court erroneously exercised its discretion when it did not sua sponte instruct the jury regarding the use of shackles during trial, and (3) for failing to allege that the circuit court erroneously exercised its discretion when it did not take adequate steps to ensure that the shackles would not be visible to the jury. The circuit court denied Claybrook's motion without a hearing. This appeal follows.

On appeal, Claybrook contends that the circuit court erred in denying his postconviction motion. He renews the claims he made in his motion and seeks a new trial.

“We need finality in our litigation.” *State v. Escalona–Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Therefore, any claim that could have been raised in a prior postconviction motion or direct appeal cannot form the basis for a subsequent motion under WIS. STAT. § 974.06 unless the defendant demonstrates a sufficient reason for failing to raise the claim earlier. *Escalona–Naranjo*, 185 Wis. 2d at 185.

Moreover, the sufficiency of the reason may be affected by delay. As our supreme court explained in *State v. Allen*, 2010 WI 89, ¶73, 328 Wis. 2d 1, 786 N.W.2d 124:

Delay can ... wreak havoc.... Waiting three and a half years before seeking a sentence reduction is one thing; waiting three and a half years before seeking a new trial is quite another. The existence of any arguably meritorious issue does not provide a sufficient reason for waiting many years to raise an issue that could have been raised earlier.

Finally, a defendant may not relitigate a matter previously litigated, “no matter how artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Applying these principles to the case at hand, we conclude that Claybrook’s postconviction motion is procedurally barred. The issue of whether Claybrook was denied a fair trial because of his shackles was already litigated and cannot be relitigated now through the guise of reformulated claims. *Id.* To the extent that Claybrook’s claims are new, he has not provided a sufficient reason for waiting almost twenty years to bring them. The delay of almost twenty years was not reasonable. Accordingly, we are satisfied that the circuit court properly denied Claybrook’s motion.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals