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
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

October 19, 2016

To:

Hon. Michael J. Piontek
Circuit Court Judge
730 Wisconsin Avenue
Racine, WI 53403

W. Richard Chiapete
District Attorney
730 Wisconsin Avenue
Racine, WI 53403

Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Jason Alexander Gorn
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Jimmie L. Parks, #320809
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:

2015AP2229 State of Wisconsin v. Jimmie L. Parks (L.C. #1994CF603)

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

Jimmie L. Parks appeals an order denying his WIS. STAT. § 974.06 (2013-14)[1] motion for postconviction relief. Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21. We affirm the order primarily because his appeal is procedurally barred.

In 1996, Parks pled guilty to one count of nonconsensual sexual intercourse causing pregnancy and a reduced count of second-degree sexual assault of a child. The victim was his

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

fifteen-year-old daughter. Four counts of sexual assault of a child and five counts of incest were dismissed and read in. The trial court sentenced Parks to twenty years' confinement on count one and a consecutive five years on count two.

Parks' counsel filed a no-merit report that considered whether trial counsel rendered ineffective assistance in connection with the DNA testing and prosecutorial misconduct relating to an allegedly frivolous pretrial motion. Parks argued in his response that his counsel was ineffective because counsel led him to believe that two DNA tests had been done before he pled guilty, although the second expert simply examined the report of the first. This court granted the no-merit report, concluding that none of the issues had arguable merit and that Parks could not have been prejudiced even if he originally was misinformed because he ultimately had a second test that confirmed his guilt to a nearly one hundred percent certainty.

Parks then petitioned pro se for a writ of habeas corpus. He challenged the sufficiency of the criminal complaint and alleged that the information was improperly filed before the State established probable cause at the preliminary hearing, thus depriving the trial court of subject matter jurisdiction. This court denied his petition on grounds that Parks' guilty plea waived any defect in the charging documents, determined that the information was not filed improperly, and that, in any event, his claims were unfounded.

Parks filed a second pro se petition for habeas relief, this one alleging ineffective assistance of trial counsel. We denied the petition as being precluded as a successive petition.

This WIS. STAT. § 974.06 motion followed. Parks sought to withdraw his 1996 guilty plea on grounds that his postconviction counsel ineffectively failed to challenge the complaint and information and trial counsel's failure, before Parks pled, to accurately advise him on the

DNA issue and that entering a guilty plea would require him to register as a sex offender.[2] The motion was summarily denied, as was a motion for reconsideration. Parks appeals.

"[A]ll grounds for relief under [WIS. STAT. §] 974.06 must be raised in a petitioner's original, supplemental, or amended motion." ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 181, 517 N.W.2d 157 (1994). Claims that "have been finally adjudicated, waived or not raised in a prior postconviction motion … may not become the basis for a [§] 974.06 motion." ***Id.*** ***Escalona-Naranjo*** likewise bars a defendant from raising a claim in a later § 974.06 motion following a properly accepted no-merit report "absent the defendant demonstrating a sufficient reason for failing to raise those issues previously." ***State v. Allen***, 2010 WI 89, ¶¶41, 62, 328 Wis. 2d 1, 786 N.W.2d 124. Whether Parks' claims are procedurally barred presents a question of law that we review de novo. *See* ***id.***, ¶15.

In ruling on Parks' first habeas petition, this court concluded that his guilty plea waived his right to challenge the charging documents and bindover after his preliminary hearing. In our no-merit decision, we considered Parks' claim that he pled guilty only because trial counsel led him to believe that two DNA tests were conducted. We held that he was not prejudiced as he

[2] Parks contended below that if he had known of the sex-offender-registration requirement, he would not have pled. On appeal, he only alludes in the fact section to that aspect of the ineffectiveness claim. It would have failed even had he fully presented it. The requirement to register as a sex offender is a collateral consequence of a plea. *See* ***State v. Bollig***, 2000 WI 6, ¶27, 232 Wis. 2d 561, 605 N.W.2d 199. Failing to advise a defendant of a collateral consequence does not invalidate an otherwise valid plea, *see* ***State v. Myers***, 199 Wis. 2d 391, 394-95, 544 N.W.2d 609 (Ct. App. 1996), and "cannot form the basis of a claim of manifest injustice requiring plea withdrawal," ***State v. Merten***, 2003 WI App 171, ¶11, 266 Wis. 2d 588, 668 N.W.2d 750.

Further, he faced up to 120 years in prison and a $50,000 fine on the eleven charges. Given that exposure and his relationship to the victim, his assertion that he would not have pled and instead risked a jury trial defies belief.

was able to have a second DNA analysis done and withdrew his plea-withdrawal motion when those results confirmed his guilt. "A matter once litigated may not be relitigated in a subsequent postconviction proceeding 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).

Finally, Parks states that he was released from prison in 2013 after serving eighteen years of his sentence and that he was revoked in 2015. In addition to the above reasons, when probation is revoked, there can be no challenge to the underlying conviction; appellate review is limited to the sentencing after revocation. *See* ***State v. Drake***, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). The predicate criminal action no longer is in controversy.

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals