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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 I

June 9, 2017

To:

Hon. Stephanie Rothstein
Milwaukee County Courthouse
949 North 9th Street
Milwaukee, WI 53233

Sara Lynn Shaeffer
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

John Barrett, Clerk
Milwaukee County Courthouse
821 W. State Street, Room 114
Milwaukee, WI 53233

Philip Steven Mora #498662
Columbia Corr. Inst.
P.O. Box 900
Portage, WI 53901-0900

Karen A. Loebel
Asst. District Attorney
821 W. State Street
Milwaukee, WI 53233

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

2015AP283

State of Wisconsin v. Philip Steven Mora
(L.C. # 2010CF003431)

Before Brennan, P.J., Kessler and Brash, JJ.

Philip Steven Mora, *pro se*, appeals from an order denying his WIS. STAT. § 974.06 (2015-16) motion for postconviction relief.¹ We conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). We summarily affirm the order.

¹ The Honorable Stephanie G. Rothstein denied Mora's WIS. STAT. § 974.06 motion. The Honorable Dennis R. Cimprich presided over Mora's 2011 jury trial and sentenced him.

All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

In 2011, a jury found Mora guilty of five felonies. After sentencing, he appealed with the assistance of postconviction/appellate counsel. He presented a single issue on appeal: whether the trial court “erred by refusing his request to instruct the jury on felony murder as a lesser-included offense of first-degree intentional homicide while armed.” See *State v. Mora*, No. 2012AP480-CR, unpublished slip op. ¶1 (WI App June 11, 2013). We affirmed Mora’s convictions after concluding that because there was “no reasonable basis ... to acquit Mora of first-degree reckless homicide while armed,” the trial court “did not err by refusing to instruct the jury on the lesser offense of felony murder.” *Id.*, ¶16. The Wisconsin Supreme Court denied Mora’s petition for review in December 2013.

In December 2014, Mora filed the WIS. STAT. § 974.06 postconviction motion that is the subject of this appeal. He alleged that *postconviction* counsel had provided ineffective assistance in Mora’s direct appeal by failing to allege that *trial* counsel provided ineffective assistance by failing to object to the filing of an amended information one month before trial that added two counts of attempted armed robbery.

The trial court denied the postconviction motion in a written order. It found “that a challenge to the amended information by trial counsel would not have been successful,” and, therefore, Mora had not demonstrated that his trial counsel or postconviction counsel provided ineffective assistance.

Mora appealed from the order. However, the appellate brief he filed with this court did not address the issue raised in his WIS. STAT. § 974.06 motion. Instead, Mora filed an appellate

brief that is nearly identical to the appellate brief filed by postconviction/appellate counsel on Mora's behalf in his direct appeal.²

In its response brief, the State noted that Mora had “discard[ed] his ineffective-assistance-of-counsel claim” and had chosen to “raise[] an entirely different issue.” The State argued that Mora was barred from relitigating the same issue presented in his direct appeal. Mora did not file a reply brief.

We agree with the State that Mora is precluded from relitigating whether the trial court erred when it denied Mora's request for a jury instruction on felony murder. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (“A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.”). Further, Mora has chosen not to brief the issue raised in his WIS. STAT. § 974.06 motion: whether trial counsel provided ineffective assistance by not objecting to the amended information. We decline to develop an argument for him. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (holding that we will not address arguments inadequately briefed).

Mora has not provided a basis to reverse the trial court's order. Therefore, we summarily affirm.

² We take judicial notice of the brief filed by postconviction/appellate counsel on Mora's behalf in *State v. Mora*, No. 2012AP480-CR, which is available in online court records.

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

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals