COURT OF APPEALS
DECISION
DATED AND FILED

July 27, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal Nos. 2009AP1886-CR
2009AP1887-CR

Cir. Ct. Nos. 1996CF961749
1996CF962970

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL TODD TATUM,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: PATRICIA D. MCMAHON, Judge. *Affirmed*.

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Michael Todd Tatum appeals from a consolidated postconviction order denying reconsideration of a previous order denying

resentencing.[1] We conclude that the motion is procedurally barred because we rejected the same resentencing and correlative ineffective assistance of trial counsel issues on direct appeal. Therefore, we affirm.

¶2 Tatum pled guilty to two armed robberies. On direct appeal, Tatum responded to his appellate counsel's no-merit report identifying several issues, including that the trial court relied on inaccurate information at sentencing, and that his trial counsel was ineffective for failing to object at sentencing to those inaccuracies. Tatum then alleged that the trial court referred to and relied upon information that he had previously committed robberies in 1989 and 1990 when he had not, insisting that he had been incarcerated in 1990. The inaccuracy was only that he had committed the robberies in 1988 and 1989, not in 1990. Consequently, the inaccuracy in Tatum's criminal record was only the year that one of the robberies had been committed.

¶3 On direct appeal, this court rejected that inaccuracy and correlative ineffective assistance of trial counsel claim, explaining that:

> Tatum's response to the no merit report also argues that the trial court relied on inaccurate information about his prior record at sentencing. When reviewing Tatum's record, the court stated that he committed a robbery in 1989, was incarcerated, and then committed another robbery in 1990. Tatum appears to argue that the correct facts are that he committed a robbery in 1988, was placed on probation, and then committed another robbery in 1989. He was then

[1] Tatum was convicted of two armed robberies that were consolidated for guilty plea and sentencing hearings, and were also consolidated on direct appeal in ***State v. Tatum***, Nos. 97-1234-CR-NM, 97-1235-CR-NM, unpublished slip op. (July 24, 1997). Tatum challenges these same two armed robbery convictions by filing a single consolidated motion that the trial court denied in a single consolidated order. Rather than referring to the motions and previous orders and appeals as consolidated or in the plural, all further references are in the singular, although all are to the consolidated cases.

> sentenced to prison on both charges in 1990. He claims he was prejudiced by this error because the trial court had the mistaken impression that he committed an additional crime in 1990.
>
> There would be no arguable merit on this issue. There is no indication that the trial court misunderstood the total number of robbery convictions in Tatum's record. Whether they were committed in 1988 and 1989, or 1989 and 1990, there is not a significant difference, and there is no indication that the trial court gave the dates of the robberies any particular weight.
>
> ….
>
> There would be no arguable merit on these issues because Tatum has not made a sufficient allegation of prejudice. As we discussed above, Tatum has not … shown that a correction of the trial court's perception of his record would have been likely to result in a different sentence.[2]

State v. Tatum, Nos. 97-1234-CR-NM, 97-1235-CR-NM, unpublished slip op. at 3-4 (Ct. App. July 24, 1997) (footnote added).

¶4 Over ten years later, Tatum moved the trial court for resentencing or sentence modification on the same basis that we had previously rejected. The trial court denied the motion on October 24, 2007, ruling that "[t]his issue was previously raised in response to appellate counsel's no merit report in the Court of Appeals, and the Court of Appeals addressed the issue." The trial court also explained that Tatum's inaccuracy assertions were contrary to the Milwaukee County Circuit Court record of his prior convictions.

[2] Tatum alleged several instances of trial counsel's ineffectiveness. Only the failure to object to the inaccurate information at sentencing is relevant to this appeal.

¶5 On July 1, 2009, Tatum moved to reconsider that October 24, 2007 order. The trial court denied the motion for the reasons set forth in its October 24, 2007 order. Tatum appeals from the July 6, 2009 order denying reconsideration.

¶6 Tatum raises the same issues—that he was sentenced on inaccurate information about the year of his previous convictions, and trial counsel's correlative ineffectiveness for failing to object to the inaccuracies—that he raised in his no-merit response. We rejected those issues, explaining precisely why they lacked arguable merit on direct appeal in 1997. *See* ***Tatum***, Nos. 97-1234-CR-NM, 97-1235-CR-NM, unpublished slip op. at 3-4.

¶7 "A decision on a legal issue by an appellate court establishes the law of the case that must be followed in all subsequent proceedings in the case in both the [trial] and appellate courts." ***State v. Casteel***, 2001 WI App 188, ¶15, 247 Wis. 2d 451, 634 N.W.2d 338. We explained why the resentencing and correlative ineffective assistance issues lacked arguable merit when we rejected them on direct appeal. *See* ***Tatum***, Nos. 97-1234-CR-NM, 97-1235-CR-NM, unpublished slip op. at 3-4. We will not revisit issues that we previously decided. *See* ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2007-08).