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DISTRICT II

August 10, 2022

To:

Hon. Kent R. Hoffmann
Circuit Court Judge
Electronic Notice

Joel Urmanski
Electronic Notice

Melody Lorge
Clerk of Circuit Court
Sheboygan County Courthouse
Electronic Notice

Macaulay T. Krueger, #570850
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Michael C. Sanders
Electronic Notice

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

2021AP1070-CR	State of Wisconsin v. Macaulay T. Krueger (L.C. #2010CF358)
2021AP1071-CR	State of Wisconsin v. Macaulay T. Krueger (L.C. #2010CF307)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

In these consolidated appeals, Macaulay T. Krueger appeals from an order of the circuit court denying his postconviction 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 (2019-20).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Following a jury trial, Krueger was convicted of three counts of causing a child under the age of thirteen to view or listen to a sex act. Krueger filed numerous pro se motions for postconviction relief raising the following claims, among others: (1) insufficient evidence to support his convictions; (2) violation of his double jeopardy rights; and (3) ineffective assistance of counsel. We rejected Krueger’s claims and affirmed. *State v. Krueger*, Nos. 2012AP51-CR and 2012AP52-CR, unpublished slip op. (WI App Mar. 13, 2013). The Wisconsin Supreme Court denied Krueger’s petition for review.

In 2017, Krueger again moved pro se for postconviction relief. At that time, as we indicated in our related opinion and order, Krueger filed the following motions:

(1) a “*Motion of and to show ACTUAL INNOCENCE*” asserting that a victim’s school record[] would establish Krueger’s innocence because it would prove that Krueger showed the victim how to use a condom and how to masturbate for educational purposes; (2) a “*Motion for Declaratory judgment*” requesting that the circuit court enter a declaration on Krueger’s judgment that he was effectively separated from his wife; and (3) a document entitled “*Briefs on Post-conviction motion*” which contained motions “to correct erroneous rulings based on incorrect case law,” and to “*Vacate and Dismiss*” some or all convictions on grounds of actual innocence and double jeopardy.

State v. Krueger, Nos. 2017AP351 and 2017AP352, unpublished slip op. at 2-3 (WI App Jan. 17, 2018). We concluded Krueger’s claims were procedurally barred by WIS. STAT. § 974.06(4) and *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). *Krueger*, Nos. 2017AP351 and 2017AP352, at 3. The Wisconsin Supreme Court again denied Krueger’s petition for review.

In 2020, Krueger again moved pro se for postconviction relief claiming that his conduct of putting on a condom in front of an eleven-year-old boy on one occasion and an eleven-year-old girl on another occasion was not sexually explicit conduct and that he was not properly

informed of the nature of the charges against him. The circuit court concluded Krueger's claims are barred by *Escalona-Naranjo*. Krueger appeals.

“We need finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185. Therefore, any claim that could have been raised in a prior postconviction motion or on 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. Furthermore, the 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).

Whether a defendant's claim is procedurally barred and whether a sufficient reason exists for the failure to previously assert the claim present questions of law we review de novo. *State v. Kletzien*, 2011 WI App 22, ¶¶9, 16, 331 Wis. 2d 640, 794 N.W.2d 920.

Applying these principles to the case at hand, we conclude that Krueger's latest postconviction motion is procedurally barred. Krueger argues that *Escalona-Naranjo* does not bar his claim that his actions of putting on a condom in front of a child was not sexually explicit conduct because WIS. STAT. § 948.01, upon which he relies, was amended after his conviction and his prior postconviction motions. The legislature amended § 948.01 to define “[I]ewd exhibition of intimate parts,” which had previously been undefined. *See* § 948.01(1t); 2019 Wis. Act 16. However, in enacting § 948.01(1t), the legislature did not change the definition of “[I]ewd exhibition of intimate parts,” but merely codified the definition set forth by our supreme court in *State v. Petrone*, 161 Wis. 2d 530, 561, 468 N.W.2d 676 (1991), *overruled on other grounds by State v. Greve*, 2004 WI 69, ¶31 n.7, 272 Wis. 2d 444, 681 N.W.2d 479.

See § 948.01(1t). Krueger relied on *Petrone* in both of his previous postconviction motions. As the circuit court stated, “While [Krueger] changes the titles and legal labels that he places on his arguments, [he] argues the same factual and legal disputes that he’s raised in his prior filings.” Claims that were litigated in the earlier WIS. STAT. § 974.06 motions cannot be relitigated. *Witkowski*, 163 Wis. 2d at 990.

As to his claim that he was not properly informed of the charges against him based on *State v. Kempainen*, 2015 WI 32, 361 Wis. 2d 450, 862 N.W.2d 587, Krueger has not demonstrated a sufficient reason for failing to raise the claim earlier. See *Escalona-Naranjo*, 185 Wis. 2d at 185. Krueger argues that *Escalona-Naranjo* does not bar this claim because *Kempainen* was decided after his conviction. However, as the State points out, Krueger filed a postconviction motion in 2017 after *Kempainen* was decided, and Krueger failed to demonstrate a sufficient reason he did not rely on *Kempainen* in that earlier motion. While Krueger asserts that his lack of time in the law library prevented him from finding and citing to *Kempainen* in his earlier postconviction motion, “[i]gnorance of the law is no defense.” See *State v. Jensen*, 2004 WI App 89, ¶30, 272 Wis. 2d 707, 681 N.W.2d 230. If ignorance of the law were to provide a sufficient reason for failing to raise a claim, it would effectively eviscerate *Escalona-Naranjo* and WIS. STAT. § 974.06’s rule barring serial postconviction motions absent a sufficient reason. Accordingly, we are satisfied that the circuit court properly denied Krueger’s motion.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals