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DISTRICT IV

November 27, 2024

To:

Hon. Bennett J. Brantmeier
Circuit Court Judge
Electronic Notice

Sara Lynn Shaeffer
Electronic Notice

Cindy Hamre Incha
Clerk of Circuit Court
Jefferson County Courthouse
Electronic Notice

James A. Hole 539975
Stanley Correctional Inst.
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Stanley, WI 54768

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

2023AP1562

State of Wisconsin v. James A. Hole (L.C. # 2008CF113)

Before Kloppenburg, P.J., Nashold, and Taylor, 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).

James Hole appeals an order denying his postconviction motion that was filed under WIS. STAT. § 974.06 (2021-22).¹ 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. We affirm.

In 2008, Hole was convicted of first-degree intentional homicide after his plea of no contest. The court sentenced him to life in prison without the possibility of extended

¹ All references to the Wisconsin Statutes are to the 2021-22 version.

supervision. Hole, by counsel, filed a postconviction motion under WIS. STAT. RULE 809.30, which the circuit court denied in 2010 after an evidentiary hearing. Hole appealed, and we affirmed in 2011. Hole, pro se, filed his current motion in 2023. The circuit court denied the motion without an evidentiary hearing.

On appeal, Hole argues that his trial counsel was ineffective by not fully investigating potential defenses that would have made a lesser charge more appropriate, and by not objecting to what Hole describes as a breach of the terms of a plea agreement related to sentencing. The State responds that we should not review these claims because they are barred by WIS. STAT. § 974.06(4), as interpreted by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). That opinion held that, when a defendant has already had a postconviction motion under WIS. STAT. RULE 809.30, § 974.06(4) bars a motion under § 974.06 unless the defendant shows, in the words of the statute, a “sufficient reason” for not having raised the current motion’s claims in the earlier postconviction motion. *Escalona-Naranjo*, 185 Wis. 2d at 185.

To show a sufficient reason why Hole did not raise these claims in his first postconviction proceeding, he asserts that his earlier postconviction counsel was ineffective. The State argues that such an ineffectiveness argument requires the defendant to demonstrate that his current claims of ineffective assistance by trial counsel are “clearly stronger” than his earlier postconviction claims, and that Hole has not attempted to make such an argument here. *See State v. Romero-Georgana*, 2014 WI 83, ¶¶4, 45-46, 360 Wis. 2d 522, 849 N.W.2d 668.

In reply, Hole asserts that this procedural bar is “moot” because his plea colloquy was defective and it was “plain error.” However, he does not develop an argument to explain how these concepts relate to the above claims of ineffectiveness by trial counsel, which are not based

on the plea colloquy. Accordingly, we agree with the State that Hole has not made a meaningful attempt to argue that his current claims are clearly stronger than his earlier ones and, therefore, the claims are properly denied.

Hole also raises issues other than ineffective assistance of trial counsel. He argues that the circuit court's plea colloquy was defective because the jury instruction for the offense was not in the materials he was provided and because the court obtained only Hole's perfunctory affirmative response as to his understanding of the elements of the offense. However, any defects of this type are not a basis to order an evidentiary hearing unless the defendant also alleges that he did not understand the necessary information. *See State v. Howell*, 2007 WI 75, ¶¶27-30, 301 Wis. 2d 350, 734 N.W.2d 48. Hole does not make any such allegation here and, therefore, we do not consider these arguments further.

Similarly, Hole argues that the plea colloquy was defective as to the factual basis for the plea. This argument fails because Hole has not asserted that he did not understand the factual basis on which he was pleading no contest. *See State v. Lackershire*, 2007 WI 74, ¶¶47-56, 301 Wis. 2d 418, 734 N.W.2d 23 (necessity of alleging lack of understanding), *abrogated on other grounds by State v. Straszkowski*, 2008 WI 65, 310 Wis. 2d 259, 750 N.W.2d 835.

Finally, Hole argues that the statute imposing a mandatory life sentence should have been mentioned during the plea colloquy. To the extent this is an argument that the plea colloquy was defective, it fails because, during Hole's first postconviction proceeding, the circuit court found that Hole understood that the mandatory sentence was life imprisonment, and we affirmed that decision on appeal. *State v. Hole*, No. 2010AP1719-CR, unpublished slip op. ¶6 (WI App

Sept. 15, 2011). Hole cannot relitigate this issue. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals