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DISTRICT IV

February 19, 2020

To:

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

2019AP521-CR

State of Wisconsin v. Timothy Lee Stewart, Sr.
(L.C. # 2010CF1301)

Before Kloppenburg, Graham and Nashold, 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).

Timothy Stewart, Sr., appeals pro se from the circuit court's order denying his postconviction motion for additional positive adjustment time. 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(1). We affirm.

In June 2017, Stewart petitioned for 159 additional days of positive adjustment time. The circuit court denied the petition. Stewart appealed, and we summarily affirmed the circuit court. *See State v. Stewart*, No. 2017AP2349, unpublished op. and order (WI App Oct. 8, 2018). We affirmed for two reasons: (1) Stewart’s argument was undeveloped, and (2) Stewart failed to provide a transcript of the circuit court’s decision. *See id.* at 2.

In December 2018, Stewart filed a postconviction motion for 159 additional days of positive adjustment time. The circuit court denied the motion, reasoning that Stewart was attempting to raise the same issue that was previously litigated. Stewart now appeals the order denying that motion.

Stewart now makes what might be viewed as a more developed argument explaining why he believes that he is entitled to 159 additional days of positive adjustment time. We do not address the merits of that argument. Rather, we affirm based on *State v. Witkowski*, 163 Wis. 2d 985, 473 N.W.2d 512 (Ct. App. 1991). Under *Witkowski*, “[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” *Id.* at 990; *see also State v. Crockett*, 2001 WI App 235, ¶15, 248 Wis. 2d 120, 635 N.W.2d 673 (“[B]ecause this claim was litigated previously, it cannot be asserted again here.”).

Therefore,

IT IS ORDERED that the circuit court’s order is summarily affirmed pursuant to Wis. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals