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DISTRICT I

March 4, 2025

To:

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Circuit Court Judge
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Maurice C. Hall 446842
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1742-CR State of Wisconsin v. Maurice C. Hall (L.C. # 2008CF5454)

Before White, C.J., Donald, P.J., and Colón, J.

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).

Maurice C. Hall, *pro se*, appeals an order denying his motion for postconviction deoxyribonucleic acid (DNA) testing pursuant to WIS. STAT. § 974.07 (2023-24).[1] He also appeals the order denying his motion for reconsideration. The circuit court determined that his motions were conclusory and insufficient to warrant relief. Based upon a review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). We summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

In 2008, Hall's nine-year-old daughter reported that Hall had sexually abused her for many years and had threatened to kill her if he went to jail for the assaults. The State charged Hall with eight felonies based on the allegations: three counts of first-degree sexual assault of a child; three counts of incest; intimidation of a victim; and child enticement. The case proceeded to trial, at which Hall was represented by counsel. A jury found Hall guilty as charged. The circuit court imposed an aggregate fifty-year term of imprisonment.

Hall, represented by successor counsel, filed a postconviction motion challenging his competency to proceed and seeking either a new trial or a retrospective determination of competency. The circuit court denied the motion, and we affirmed. ***State v. Hall***, No. 2013AP209-CR, unpublished slip op. (WI App Oct. 15, 2013).

Following our decision in ***Hall*** and our supreme court's order denying review, Hall unsuccessfully sought postconviction relief multiple times on his own behalf. As relevant here, he filed a motion in 2015, pursuant to WIS. STAT. § 974.06. He alleged that his trial counsel was ineffective for failing to "br[ing] to light" that his daughter's DNA was not recovered from his belongings, his daughter did not have any physical injuries, and a videotaped statement played for the jury was not corroborated. The circuit court denied the motion on August 18, 2015. Hall did not pursue an appeal.

In June 2023, Hall began his current round of postconviction litigation by moving for postconviction DNA testing pursuant to WIS. STAT. § 974.07. The circuit court denied relief and then denied Hall's motion for reconsideration. Hall appeals.

After a criminal conviction, a defendant may move for DNA testing of evidence that satisfies three conditions set forth in WIS. STAT. § 974.07(2). Those conditions are: (1) "[t]he

evidence is relevant to the investigation or prosecution that resulted in the conviction"; (2) the evidence is in the "possession of a government agency"; and (3) the evidence, if previously subjected to forensic DNA testing, "may now be subjected to another test using a scientific technique that was not available or was not utilized at the time of the previous testing and that provides a reasonable likelihood of more accurate and probative results." *See* § 974.07(2)(a)-(c).

If the evidence satisfies the three conditions set forth in WIS. STAT. § 974.07(2), and the integrity of the evidence can be confirmed, then § 974.07(7) provides two potential avenues for DNA testing. *See* § 974.07(7)(a)4., (b)3. Pursuant to § 974.07(7)(a), the circuit court *shall* order DNA testing if: (1) the defendant claims innocence of the offense at issue; and (2) "[i]t is reasonably probable that the [defendant] would not have been ... convicted ... if exculpatory [DNA] testing results had been available before the ... conviction[.]" Pursuant to § 974.07(7)(b), the circuit court *may* order DNA testing if "[i]t is reasonably probable that the outcome of the proceedings ... would have been more favorable to the [defendant] if the results of [DNA] testing had been available[.]"

Here, Hall moved the circuit court to order retesting of "the preserved DNA evidence from [his] case," but he did not identify the items at issue, he did not explain how the evidence satisfied the three conditions in WIS. STAT. § 974.07(2), and he did not explain why the circuit court should or could grant relief under § 974.07(7). The circuit court denied the motion without a hearing on the grounds that the motion was conclusory and unsupported.

The circuit court did not err. A postconviction motion must set forth sufficient material facts demonstrating that the movant is entitled to relief. ***State v. Allen***, 2004 WI 106, ¶15, 274 Wis. 2d 568, 682 N.W.2d 433. When a postconviction motion is merely conclusory, a circuit

court may, in its discretion, deny relief without a hearing. ***Id.***, ¶¶9, 36. A postconviction motion will normally be sufficient if it includes allegations that satisfy "the five 'w's' and one 'h'; that is, who, what, where, when, why, and how." ***Id.***, ¶23. The postconviction motion here did not begin to satisfy the ***Allen*** standard. The circuit court therefore properly denied the motion without a hearing. ***Id.***, ¶12.

The circuit court also properly denied Hall's motion for reconsideration. "To prevail on a motion for reconsideration, the movant must present either newly discovered evidence or establish a manifest error of law or fact." ***Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.***, 2004 WI App 129, ¶44, 275 Wis. 2d 397, 685 N.W.2d 853. Hall did neither. Instead, he attempted a "do-over," seeking to correct his own mistakes by identifying the items that he wanted tested and then alleging that the evidence he identified satisfied the conditions for DNA testing described in WIS. STAT. § 974.07.

Further, the motion for reconsideration was itself conclusory. Hall conceded in his motion that the evidence at issue had previously been subjected to DNA testing but he asserted that the evidence should be "subjected to another test using a scientific technique that was not available." *See* WIS. STAT. § 974.07(2)(c). Hall failed to explain, however, what that newly available scientific technique might be, and he failed to address how additional testing would provide a reasonable likelihood of more accurate and probative results. *See* ***id.*** Hall also failed to explain why it was reasonably probable either that he would not have been convicted or that the outcome of the trial would have otherwise been more favorable if additional DNA testing had

been available.[2] *See* § 974.07(7)(a)2.; (b)1. The circuit court therefore properly denied relief. ***Allen***, 274 Wis. 2d 568, ¶12.

Separately, we note that Hall seeks to raise an additional issue in his appellate briefs, namely, a claim that his trial counsel was ineffective for "withholding DNA evidence" from Hall and permitting the State to do so as well. Hall, however, may not pursue his claim of ineffective assistance of trial counsel in this court.

Hall did not raise a claim of ineffective assistance of counsel in the 2023 motions that underlie this appeal. Rather, Hall raised such a claim in the 2015 postconviction motion that he filed pursuant to WIS. STAT. § 974.06. The circuit court denied that motion in an order entered on August 18, 2015, and the time to appeal that order passed long ago. *See* § 974.06(6), (7) (providing that proceedings under § 974.06 are civil in nature and that an appeal from the order resolving the motion may be taken "as from a final judgment"); WIS. STAT. § 808.04(1) (providing that the time for filing an appeal from a final judgment or final order entered in a civil matter normally does not exceed ninety days after entry). Hall therefore may not challenge the 2015 order in the instant appeal, which Hall filed in September 2023. This court lacks jurisdiction over a final order if a timely notice of appeal from that order was not filed.

[2] For the sake of completeness, we note that Hall testified at his trial and admitted that he was the source of the male DNA present in the sperm fractions and other genetic material found on the rags and bedding seized from his home and subjected to DNA testing. The expert who conducted the DNA testing also testified at trial. The expert told the jury that no DNA from any female was found on the items tested and, relatedly, that none of the DNA on the items tested matched the DNA profile of Hall's young daughter. That expert testimony was not contradicted. Hall fails to explain in any of his submissions how, in light of this evidentiary record, additional DNA testing could reasonably give rise to a more favorable outcome at trial. Accordingly, his submissions do not demonstrate a basis for further DNA testing under WIS. STAT. § 974.07(7).

Townsend v. Massey, 2011 WI App 160, ¶11, 338 Wis. 2d 114, 808 N.W.2d 155; WIS. STAT. RULE 809.10(1)(e).

Moreover, a matter once litigated in a postconviction proceeding "may not be relitigated in a subsequent postconviction proceeding 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). The record here shows that Hall raised his claim of ineffective assistance of trial counsel in his 2015 postconviction litigation, and the circuit court entered an order deciding the issue. Hall did not file a timely appeal challenging that order, so the order conclusively resolved his claim. ***State v. Thames***, 2005 WI App 101, ¶12, 281 Wis. 2d 772, 700 N.W.2d 285. Hall may not raise the claim again. ***Witkowski***, 163 Wis. 2d at 990. For all the foregoing reasons, we affirm.

IT IS ORDERED that the orders are summarily affirmed. *See* 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