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DISTRICT II

March 12, 2025

To:

Hon. Eugene A. Gasiorkiewicz
Circuit Court Judge
Electronic Notice

Nicholas DeSantis
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Lonnie D. Story
Electronic Notice

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

2023AP2165

State of Wisconsin v. Terry Jackson (L.C. #1992CF14)

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).

Terry Jackson appeals from a circuit court order denying his postconviction motion. The court determined that Jackson's motion was procedurally barred. 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 (2023-24).¹ We affirm.

In 1992, Jackson was convicted following a jury trial of first-degree intentional homicide with use of a dangerous weapon as a party to a crime. He and another person were accused of

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

giving an eleven-year-old child, T.S., a gun and causing him to shoot and kill a man who had stolen drugs from a fellow gang member. The circuit court sentenced Jackson to life imprisonment with eligibility for parole in 50 years.

This court affirmed Jackson's conviction on direct appeal. *State v. Jackson*, No. 1994AP731-CR, unpublished slip op. (WI App June 21, 1995). In doing so, we rejected claims that Jackson's trial counsel was ineffective, that the circuit court erred in denying his request for a mistrial, that the court erroneously exercised its discretion at sentencing, and that the jury pool was constitutionally deficient.

In 2003, Jackson filed a pro se postconviction motion pursuant to WIS. STAT. § 974.06. In it, he raised a claim of newly discovered evidence. Jackson alleged that T.S. would recant his trial testimony. He also argued that other witnesses had lied and would similarly recant their statements. Jackson offered affidavits and testimony in support of his claim.² After multiple hearings on the matter, the circuit court denied the motion, finding the proffered evidence insufficiently credible. This court affirmed that decision. *State v. Jackson*, No. 2005AP1739, unpublished op. and order (WI App Jan. 17, 2007).

In 2023, Jackson, now represented by counsel, filed another postconviction motion pursuant to WIS. STAT. § 974.06. Again, he raised a claim of newly discovered evidence. Again, that claim was based upon purported recantations of various witnesses, including T.S., Cornelius Hunter, and Leonard Herron. Jackson's motion did not acknowledge the previous § 974.06

² For example, Jackson submitted an unsigned affidavit from T.S. Likewise, he submitted a signed affidavit from a witness named Cornelius Hunter and offered testimony from a witness named Leonard Herron.

motion, nor did it allege a sufficient reason for failing to raise the claim earlier. Ultimately, the circuit court denied the motion, determining that it was procedurally barred. This appeal follows.

“We need finality in our litigation.” *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Therefore, any claim that could have been raised in a prior postconviction motion or 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, a 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).

Applying these principles to the case at hand, we agree with the circuit court that Jackson’s latest postconviction motion is procedurally barred. Claims of witness recantation that were litigated in the previous WIS. STAT. § 974.06 motion cannot be relitigated. *State v. Witkowski*, 163 Wis. 2d at 990. To the extent that Jackson’s motion presents new issues, he has not demonstrated a sufficient reason for failing to raise them earlier. *See Escalona-Naranjo*, 185 Wis. 2d at 185. Accordingly, we are satisfied that the court properly denied it.³

Upon the foregoing reasons,

³ To the extent we have not addressed an argument raised by Jackson on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to 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