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DISTRICT I

July 8, 2025

To:

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
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Donald V. Latorraca
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You are hereby notified that the Court has entered the following opinion and order:

2023AP788-CR State of Wisconsin v. Alfredo Vega (L.C. # 1993CF934212)

Before Donald, P.J., Geenen, and Colón, 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).

Alfredo Vega, pro se, appeals from a circuit court order denying his motion for postconviction DNA testing. 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] The order is summarily affirmed.

In November 1993, police found the body of a woman with severe head injuries in a home in Milwaukee. Police arrested Vega, and he gave a custodial statement. He said he had

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

met the victim at a tavern the night before. They went to her apartment and had sexual intercourse. At some time in the early morning, Vega heard a voice telling him to look for money and jewelry and to "knock [the victim] out so that she wouldn't wake up[.]" ***State v. Vega***, No. 1995AP2895-CR, unpublished slip op. at 2 (Ct. App. Nov. 5, 1996). Vega found a hammer and hit the victim in the head twice. He stole some of her personal property and then checked on her. The victim was still breathing, and the voice told Vega she would be okay; Vega left. The victim's autopsy revealed "that the victim had been struck at least seven times in the head, fracturing the skull and causing the victim's death from severe brain injury." ***Id.*** at 7. Vega was charged with first-degree intentional homicide while armed and armed robbery.

Vega initially entered pleas of not guilty and not guilty by reason of mental disease or defect. He also filed a motion to suppress his statement to the police, arguing he had not been properly advised of his rights and that his statement was coerced. Neither of the two doctors appointed to examine Vega found any support for the special plea, ***id.*** at 2, so Vega withdrew it and requested a bench trial. On the date of the bench trial, the parties first litigated the suppression motion, which the trial court denied. Ultimately, the court convicted Vega as charged. ***Id.*** at 2-3. Vega was sentenced to life imprisonment with parole eligibility beginning in 2070 for the homicide, plus a consecutive 20 years of imprisonment for the robbery. He filed a postconviction motion for a new trial, which was denied. Vega then challenged his convictions on appeal, but we affirmed. ***Id.*** at 1-2.

Vega subsequently filed at least four pro se postconviction motions in the trial court: a WIS. STAT. § 974.06 motion, which was denied in April 2016 as procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994); a motion for DNA testing under WIS. STAT. § 974.07, which was dismissed in August 2016 because the record had been

transmitted to this court on appeal,[2] thereby depriving the trial court of competency under WIS. STAT. § 808.075(3); another motion for DNA testing that sought to compel bartender A.C. to provide a DNA sample, which was denied in April 2017 because Vega identified no legal authority for such an order; and a "petition for judicial notice," which was construed as another § 974.06 motion and denied in March 2020 as barred by ***Escalona***. Vega also petitioned this court for a writ of habeas corpus, which was denied. *See* ***State ex rel. Vega v. DeHaan***, No. 2022AP513-W, unpublished op. and order (WI App Jan. 20, 2023).

In November 2022, Vega filed the motion for DNA testing that underlies the current appeal. He asked "to have all evidence obtained by the Milwaukee Police Department be taken to the Wisconsin State Crime Laboratory" for DNA testing. He claimed that prior to trial, the trial court had "ordered the Milwaukee Police Department to take all and every evidence obtained by the police that was recovered at the crime scene belonging to the victim" as well as "all and every evidence of the suspect Alfredo Vega" to the crime lab "for DNA testing," but this evidence was never tested, in violation of the court order. Vega also renewed his request for an order requiring A.C. to provide a DNA sample. The trial court denied the motion, concluding the statutory prerequisites for postconviction DNA testing had not been met. Vega appeals.

At any time after being convicted of a crime, a person may make a motion in the trial court for an order requiring forensic DNA testing if evidence to be tested: (1) is relevant to the prosecution that resulted in the conviction; (2) is in the actual or constructive possession of a

[2] That appeal, No. 2016AP353, involved the trial court's February 2016 denial of Vega's request to access his prison trust account funds to purchase copies of records held by the Milwaukee Police Department and of his motion to compel the police department to turn over the records.

government agency; and (3) has not previously been subjected to forensic DNA testing. *See* WIS. STAT. § 974.07(2)(a)-(c).

The trial court is required to order DNA testing if: (1) the movant claims to be innocent of the offense at issue; (2) it is reasonably probable that the movant would not have been prosecuted or convicted if exculpatory DNA test results had been available before the prosecution or conviction; (3) the evidence to be tested satisfies WIS. STAT. § 974.07(2)(a)-(c); and (4) the chain of custody of the evidence, or the testing itself, establishes the integrity of the evidence. *See* § 974.07(7)(a). The trial court may order DNA testing at its discretion if: (1) it is reasonably probable that the outcome of the proceedings would have been more favorable to the movant if the results of DNA testing had been available before the prosecution or conviction; (2) the evidence to be tested satisfies § 974.07(2)(a)-(c); and (3) the chain of custody of the evidence, or the testing itself, establishes the integrity of the evidence. *See* § 974.07(7)(b).

Vega's postconviction motion does not directly identify or discuss either set of prerequisites. Given that Vega claimed innocence in his motion, the trial court evaluated his motion under the mandatory testing paragraph, WIS. STAT. § 974.07(7)(a). Under either scheme, however, the only factor in dispute is the "reasonably probable" prong.[3]

Our standard of review for a "reasonably probable" determination under WIS. STAT. § 974.07(7) is not fully settled. This court has held that we review such determinations for an

[3] Compliance, or a lack of compliance, with a court order is not grounds for DNA testing under WIS. STAT. § 974.07. Moreover, the only pretrial order Vega has provided directs him to provide "blood, saliva, head hair and pubic hair samples" that are to be sent to the crime lab for "investigation and comparison." There is no indication that the material was ordered collected for DNA testing; indeed, exhibits to Vega's motion suggest that the only testing performed on the evidence in 1993 was blood typing, not DNA analysis.

erroneous exercise of discretion. ***State v. Hudson***, 2004 WI App 99, ¶16, 273 Wis. 2d 707, 681 N.W.2d 316. Our supreme court, however, has acknowledged arguments for both the discretionary standard as well as de novo review, and it has thus far declined to determine which applies. *See* ***State v. Denny***, 2017 WI 17, ¶¶74-75, 373 Wis. 2d 390, 891 N.W.2d 144.

There are also competing definitions of "reasonably probable," which the supreme court has also declined to resolve. *See* ***id.***, ¶81 n.21. One definition parallels the newly discovered evidence standard—that is, whether there is a "reasonable probability that a jury, looking at both the [old evidence] and the [new evidence], would have a reasonable doubt as to the defendant's guilt." *See* ***id.*** (alterations in original); *see also* ***State v. McCallum***, 208 Wis. 2d 463, 475, 561 N.W.2d 707 (1997). The other definition comes from the ineffective assistance of counsel test, where "reasonably probable" means "a probability sufficient to undermine confidence in the outcome." *See* ***Denny***, 373 Wis. 2d 390, ¶81 n.21; *see also* ***Strickland v. Washington***, 466 U.S. 668, 694 (1984).

Strictly speaking, we are bound by our prior decisions. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997). However, Vega cannot prevail under either standard of review or either definition of "reasonably probable."

Under the mandatory testing scheme, the question is whether it is reasonably probable that Vega would not have been prosecuted or convicted of his crimes if exculpatory DNA testing results had been available before the prosecution or conviction. WIS. STAT. § 974.07(7)(a)2. We assume for purposes of this analysis that if DNA testing were to occur, the results would in fact be exculpatory. ***Denny***, 373 Wis. 2d 390, ¶76. In this case, "exculpatory" DNA results could be

the absence of Vega's DNA at the crime scene, his exclusion as a contributor to any DNA evidence, and/or the identification of another person as the source of any DNA evidence.[4]

The trial court concluded that there was "simply not a reasonable probability [Vega] would not have been prosecuted or convicted" because "[e]ven without DNA evidence, the State's evidence incriminating the defendant was plentiful." That evidence included Vega's custodial statement in which he acknowledged meeting the victim, going to her home, stealing her items, and bludgeoning her with a hammer; the medical examiner's opinion attributing the victim's death to multiple blows to the head; the testimony of the victim's brother, who identified property found at Vega's mother's house as his sister's; and the testimony of a tavern owner who testified that Vega and the victim had been together in his tavern the night before her death. As the trial court explained, "identity may have been an initial question, [but] it was quickly not the central question in this case; rather, much of the pretrial and postconviction proceedings were concerned with the defendant's mental responsibility."

Accordingly, even without DNA evidence to directly link Vega to the crime, and even with DNA evidence attributable to another person, the State "had a sufficient basis to prosecute the defendant based on the circumstantial case built by investigators and based on the defendant's confession." For the same reasons, it is also reasonably probable that Vega still "would have been convicted[,] even with exculpatory results from testing of the evidence found at the scene, based on the evidence put forth at trial."

[4] Vega claims that "none of the DNA tested" belonged to him, based on test results showing Vega to be a "nonsecretor." There is no indication that a "nonsecretor" determination has any relevance to DNA testing, only blood typing. *See* ***State v. Burroughs***, 117 Wis. 2d 293, 299, 344 N.W.2d 149 (1984) (discussing "secretors" and "nonsecretors" as those who do, or do not, secrete their *blood type* in bodily emissions).

These conclusions apply with equal force under the discretionary testing scheme of WIS. STAT. § 974.07(7)(b), in which we ask whether it is reasonably probable that the outcome of the proceedings would have been more favorable to the movant if the results of DNA testing had been available before prosecution or conviction. Clearly, the outcome would remain unchanged.

In sum, the statutory requirements for postconviction DNA testing under WIS. STAT. § 974.07(7) have not been satisfied. It is not reasonably probable that Vega would not have been prosecuted or convicted of his crime, nor is it reasonably probable that the results of his case would have been more favorable, even if exculpatory DNA testing results had been available. Accordingly, the trial court did not erroneously deny Vega's WIS. STAT. § 974.07 motion.[5]

Therefore,

IT IS ORDERED that the order is 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

[5] The trial court's decision does not expressly discuss the request for A.C. to provide reference samples. Aside from the fact that A.C.'s DNA does not qualify as evidence within the State's custody, this request was previously made and rejected in 2017. Vega cannot continue to relitigate it. *See* ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) ("A matter once litigated may not be relitigated in a subsequent postconviction proceeding[.]").