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DISTRICT II

July 30, 2025

To:

Hon. Ralph M. Ramirez
Circuit Court Judge
Electronic Notice

Donald V. Latorraca
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Mark A. Stephens #81869
Sturtevant Transitional Facility
P.O. Box 903
Sturtevant, WI 53177-0903

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

2024AP552-CR

State of Wisconsin v. Mark A. Stephens (L.C. #2002CF886)

Before Gundrum, P.J., Grogan, and Lazar, 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).

Mark A. Stephens appeals pro se from an order of the circuit court denying his **“MOTION TO COMPEL [the Waukesha County Circuit Court] TO RETURN FUNDS ILLEGALLY RECEIVED FROM THE DEPARTMENT OF CORRECTIONS” (DOC)**. 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 For the following reasons, we affirm.

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

Background

Stephens pled guilty to armed burglary, and the circuit court sentenced him in 2006 to a substantial term of imprisonment and extended supervision. As a part of sentencing, the court ordered Stephens to pay \$5,354.91 in restitution “within the first five years of extended supervision.”

Stephens subsequently filed a direct appeal asserting the State breached the plea agreement at sentencing and his counsel was ineffective for failing to object to the State’s misrepresentation of the presentence investigation (PSI) report recommendation. We affirmed the judgment and order of the circuit court. *State v. Stephens*, No. 2006AP2809-CR, unpublished slip op., ¶16 (WI App Apr. 23, 2008). Our supreme court denied Stevens’s petition for review.

In 2015, Stephens filed a WIS. STAT. § 974.06 motion asserting his sentence was excessive and “unduly harsh” and that the PSI report was defective. We concluded on appeal that Stephens’s motion lacked merit and was barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181, 517 N.W.2d 157 (1994), and we affirmed the order of the circuit court. *State v. Stephens*, No. 2015AP1981-CR, unpublished slip op. and order at 2 (WI App Jan. 18, 2017). Our supreme court denied Stevens’s petition for review.

In 2017, Stephens filed a “Motion to Enforce Judgment of Conviction in Its Entirety.” In the motion, he stated that “[o]n 11-07-2016, the department of corrections started to take 50% of all monies incoming and wages that inmates received for debts such as restitution, court cost[s], etc.” and sought an order preventing the DOC from taking said “deductions of incomes for restitution and court cost[s]” related to his crime in this case. He asserted that the judgment

of conviction “was clear on its face that restitution and court costs are to be paid on extended supervision, not while incarcerated.”

The circuit court denied Stephens’s motion, and he appealed. While the appeal was pending, Stephens indicated his desire to address additional claims in circuit court and asked this court to “either suspend temporarily or dismiss my appeal without prejudice, and I will re-file at a later date.” In an October 6, 2017 order, we denied his request, explaining,

Stephens may not condition the dismissal of this appeal on a right to pursue further proceedings in a different court. In an appeal other than one under WIS. STAT. RULE 809.30, the time for filing a notice of appeal cannot be extended. *See* WIS. STAT. RULE 809.82(2)(b). Stephens’s appeal is not brought pursuant to RULE 809.30 and he had ninety days to appeal the circuit court’s March 2, 2017 order. *See* WIS. STAT. § 808.04(1). Though his current appeal is timely as to the March 2, 2017 order, a new notice of appeal would fall outside the ninety-day nonextendable deadline. Because Stephens’s motion does not cite to WIS. STAT. RULE 809.18 (governing voluntarily dismissals) and given his request for dismissal without prejudice, we do not construe his letter as a RULE 809.18 notice of voluntary dismissal. *See State v. Lee*, [1]97 Wis. 2d 9[59], 542 N.W.2d 143 (1996) (we must dismiss an appeal when an appellant files a notice of voluntary dismissal pursuant to RULE 809.18, before a decision has been issued). We advise that voluntary dismissal may preclude review of the final judgments or orders from which the appeal is filed.

Next, we decline to “temporarily suspend” the appeal to allow Stephens to pursue additional claims in the circuit court. If Stephens wishes to pursue additional claims, he will need to file a new motion in the circuit court which, if denied, can be separately appealed.

Stephens did not petition the Wisconsin Supreme Court for review of our denial of his request to either temporarily suspend the appeal or dismiss it without prejudice.

Despite being warned that “voluntary dismissal may preclude review of the final judgments or orders from which the appeal is filed,” Stephens filed a “MOTION TO

WITHDRAW APPEAL WITHOUT PREJUDICE UNDER [WIS. STAT.] RULE 809.18(1),” in which he moved us “pursuant to [§] 809.18(1) to voluntarily ask for dismissal without prejudice.” In an order dated October 20, 2017, we pointed out that our October 6, 2017 order explained that if Stephens voluntarily dismissed the appeal it may preclude future review of the final judgments or orders from which he was appealing. We granted Stephens’s request and dismissed the appeal “[b]ecause we are required to honor a request to voluntarily dismiss an appeal, *State v. Lee*, 197 Wis. 2d 959, 972, 542 N.W.2d 143 (1996).” We noted in a footnote that “[w]e ignore the request to dismiss ‘without prejudice.’” Stephens did not petition for review of this order either.

In addition to the above actions, Stephens also pursued, in District IV of the Wisconsin Court of Appeals, a writ of certiorari action to preclude the DOC from taking money from his account to pay restitution and costs. District IV ultimately concluded “that restitution may not be collected until Stephens is on extended supervision” but denied Stephens’s request that the court “order the return of all funds taken for restitution” due to an appellate court’s limited authority for granting relief in a writ action. *State ex rel. Stephens v. Carr*, No. 2020AP1600, unpublished slip op., ¶¶3 n.1, 28-29 (WI App Mar. 31, 2022). Stephens did not appeal District IV’s order.

In 2023, Stephens filed the present motion—a “**MOTION TO COMPEL THIS COURT TO RETURN FUNDS ILLEGALLY RECEIVED FROM THE DEPARTMENT OF CORRECTIONS IN THE ABOVE CASE.**”² Referring to the DOC’s alleged refusal to refund the money it already had taken from his account and dispersed for restitution and court

² Stephens also filed a tort action in Dane County Circuit Court. The circuit court dismissed the action, and Stephens appealed. That appeal is pending before District IV, not District II.

costs, Stephens sought, “on the grounds that it has been ruled on” by this court (District IV) in the writ action, the “return [of] all funds illegally received” from the DOC.

In connection with two nonevidentiary hearings the circuit court held on the motion, the court learned that the DOC had dispersed \$555.49 to the Waukesha County Clerk of Courts and \$5,354.91 to the crime victim compensation fund to reimburse the fund for compensation it had previously provided to the victim. The court denied Stephens’s motion, and he now appeals.

Discussion

In his appeal, Stephens again asserts that his judgment of conviction “states that no money for court costs or restitution was to be taken until he was on supervision,” and thus, that the circuit court erred in denying his motion for the return of the funds removed from his account. We conclude the court lacked competency to order a return of the funds taken from Stephens’s account and that his action here is otherwise procedurally barred.

We have previously held that the circuit court, acting as “the sentencing court[,] lacks competency to issue a money judgment against the State even though the claim arises from improperly seized assets pursuant to restitution order entered in the criminal proceedings.” *State v. Minniecheske*, 223 Wis. 2d 493, 497, 590 N.W.2d 17 (Ct. App. 1998). As we explained in *State v. Williams*, 2018 WI App 20, ¶4, 380 Wis. 2d 440, 909 N.W.2d 177, “[o]nce an inmate is sentenced to prison, he or she is under the control of the executive branch and must address his or her objections to the internal operating procedures of the DOC through the [inmate complaint review system] ... and then, if necessary, by writ of certiorari to the circuit court.” *Id.* A sentencing court may address “matters related to the criminal prosecution and such incidental or ancillary matters as [are] essential to carry out” the court’s functions. *Minniecheske*, 223

Wis. 2d at 500. The return of funds to Stephens’s account “was not necessary to resolve the criminal matter before the circuit court.” *See id.*

Moreover, even if the circuit court did not lack competency to decide Stephens’s motion, his claim is procedurally barred. “We need finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185. Therefore, any claim that could have been raised in a prior postconviction motion or on direct appeal cannot form the basis for a subsequent motion unless the defendant demonstrates a sufficient reason for failing to raise the claim earlier. *Id.* The issue Stephen raises in this appeal is essentially the same issue he raised in his 2017 appeal to this court when he requested voluntary dismissal of his appeal. Although we had warned him before he requested such dismissal that it “may preclude review of the final judgments or orders from which the appeal is filed,” he nonetheless asked us to dismiss his appeal voluntarily just days after that warning, and we obliged. A previously litigated matter may not be relitigated. *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Therefore,

IT IS ORDERED that the order of the circuit court 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