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DISTRICT I

August 12, 2025

To:

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Circuit Court Judge
Electronic Notice

Daniel J. O'Brien
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Clerk of Circuit Court
Milwaukee County Safety Building
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Oshkosh, WI 54903-3310

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

2023AP1782

State of Wisconsin v. Anthony B. Liggins (L.C. # 1998CF2529)

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

Anthony B. Liggins, pro se, appeals from an order denying his postconviction motion under WIS. STAT. § 974.06 (2023-24),¹ without a hearing, on the grounds that the claims are 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. We summarily affirm.

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

Liggins was convicted in 1998 of two counts of first-degree sexual assault using a dangerous weapon; substantial battery; kidnapping; one count of intimidating a witness; and one count of intimidating a victim. The charges stemmed from an attack on D.S., Liggins' girlfriend at the time. D.S. was hospitalized after the incident; she was diagnosed with a concussion and admitted overnight for observation. She disclosed the sexual assaults to her doctor the next day, while still in the hospital.

Liggins pled guilty to the battery charge and the intimidation charges, but proceeded with a jury trial on the two sexual assault charges and the kidnapping charge. His defense was that he and D.S. had consensual sexual intercourse prior to their argument. The jury found Liggins guilty of the three charges. He received sentences for all of his convictions totaling 58 years in prison.

Liggins, through counsel, filed a postconviction motion asserting ineffective assistance of trial counsel. Liggins' claims revolved around evidence relating to a knife that was used during the sexual assault. Liggins argued that his trial counsel was ineffective for failing to file a motion in limine "allowing disclosure of past knife use" by D.S. in previous altercations, and for failing to use "live testimony" to introduce into evidence the lack of Liggins' fingerprints on the knife, rather than stipulating to that fact. The circuit court denied the motion.

Liggins appealed, reasserting his ineffective assistance claims. He also argued that the evidence was insufficient to support the sexual assault and kidnapping convictions, and that these counts were multiplicitous. This court rejected those claims and affirmed Liggins' convictions. See *State v. Liggins*, No. 2000AP311-CR, unpublished slip op., ¶1 (WI App Feb. 20, 2001). Our supreme court denied review.

In January 2003, Liggins filed a pro se motion seeking discovery. Specifically, he sought D.S.’s medical records from her hospitalization after the incident, and the lab reports comparing the semen collected in D.S.’s rape kit to the DNA results of a blood sample he had provided. The circuit court denied the motion after construing it as a motion for pretrial discovery, and therefore inapposite. Liggins filed a subsequent motion in May 2003, citing the postconviction DNA testing statute. The court also rejected that motion, finding that the statute did not apply because Liggins’ blood sample had previously been tested, and therefore postconviction testing was not available under WIS. STAT. § 974.07(2) (2003-04). Liggins filed a motion for reconsideration of the court’s decisions in July 2005. The court denied the motion, noting that the district attorney’s office had “verified that the DNA evidence was not exculpatory.”

In December 2007, Liggins filed another pro se postconviction discovery motion, again seeking D.S.’s medical records. At the trial, an eight-page portion of D.S.’s “extensive” medical records had been admitted into evidence, and had been provided to the defense as part of pretrial discovery. D.S.’s doctor, Dr. Loren Leshan, also testified at the trial regarding D.S.’s concussion and her disclosure of the sexual assaults. However, the term “concussion” did not appear in the exhibit. Dr. Leshan explained that the exhibit did not include some physician and nurse progress notes, where the term “concussion” may have been noted.

Liggins asserted in his postconviction discovery motion that he was entitled to all of D.S.’s medical records. He argued that Dr. Leshan’s testimony regarding D.S.’s concussion required medical records to corroborate that diagnosis, and further, that not having D.S.’s full medical records affected his ability to prepare his defense.

In contrast, the State argued that the trial exhibit stated that D.S. had a “head injury,” which includes a concussion. Furthermore, it noted the defense was fully aware that D.S. had suffered a significant head injury, which had led to her admission to the hospital. Therefore, the State asserted that Liggins was not entitled to additional medical records as postconviction discovery because he had not established a reasonable probability that this evidence would have affected the outcome of the trial. The circuit court agreed, and denied Liggins’ motion.

Liggins filed a motion for reconsideration of that decision, which the circuit court denied. He did not appeal.

In August 2023, Liggins filed the WIS. STAT. § 974.06 motion underlying this appeal. He argued ineffective assistance of his postconviction counsel for “inadequately and improperly brief[ing]” the arguments in his direct appeal relating to the knife evidence, and for failing to raise claims related to D.S.’s medical records. He also argued that the State failed to disclose the crime lab report regarding his DNA analysis. Additionally, he asserted that his trial counsel was ineffective for several reasons, all relating to his defense that D.S. lied about being sexually assaulted.

The circuit court denied the motion on the grounds that it is procedurally barred, since Liggins could have raised the issues included in the motion in his previous postconviction motions. The court noted that there is no exception to the procedural bar when the previous motions filed were postconviction discovery motions. Furthermore, the court was not persuaded that any of the current claims were clearly stronger than the claims previously raised. This appeal follows.

We conclude that Liggins’ claims are procedurally barred. In the first place, Liggins’ claims relating to D.S.’s medical records and the crime lab report regarding his DNA results have already been litigated in Liggins’ previous postconviction motions, as described above. They are therefore procedurally barred. *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 no matter how artfully the defendant may rephrase the issue.”).

Likewise, Liggins’ claims of ineffective assistance of his trial counsel are procedurally barred under the same standard. These claims all relate to evidence presented at trial relating to the sexual assault charges, which Liggins argues was fraudulent. However, the issue of the sufficiency of the evidence for the sexual assault convictions was litigated during Liggins’ direct appeal. *See Liggins*, No. 2000AP311-CR, ¶¶9-10. Therefore, these claims are also procedurally barred. *See Witkowski*, 163 Wis. 2d at 990.

Furthermore, Liggins’ claim that his postconviction counsel was ineffective for “inadequately and improperly brief[ing]” the unsuccessful arguments in his direct appeal relating to the knife evidence is procedurally barred because he failed to raise it in his previous postconviction motions. When prior postconviction motions or appeals have been filed, a defendant must demonstrate that there is a “sufficient reason” for not raising the current claims in the prior motion or on direct appeal. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994). Whether a WIS. STAT. § 974.06 motion alleges a sufficient reason “for failing to bring available claims earlier” is a question of law that we review de novo. *State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

Liggins did not raise this claim in his previous postconviction discovery motions, and, as the circuit court observed, “[t]here is no exception to the *Escalona–Naranjo* rule for postconviction discovery motions.” See *State v. Kletzien*, 2011 WI App 22, ¶2, 331 Wis. 2d 640, 794 N.W.2d 920. In addressing this issue, Liggins cites his misunderstanding of the law. However, his “ignorance of the law or negligence as to the existence of the law” does not establish a sufficient reason for failing to previously raise his arguments. See *State v. Collova*, 79 Wis. 2d 473, 488, 255 N.W.2d 581 (1977).

Moreover, while in some cases ineffective assistance of postconviction counsel may be a sufficient reason for failing to raise a claim in an earlier motion or on direct appeal, the defendant “must demonstrate that the claims he wishes to bring are clearly stronger than the claims postconviction counsel actually brought.” *Romero-Georgana*, 360 Wis. 2d 522, ¶¶4, 36. Liggins does not meet this burden.

The clearly stronger standard is applied by “compar[ing] the arguments now proposed against the arguments previously made” by postconviction counsel. *Id.*, ¶46. Liggins does not provide an analysis with such a comparison, but rather merely makes a conclusory statement that the knife evidence was “inadequately and improperly briefed.” Put another way, Liggins fails to allege “sufficient material facts—*e.g.*, who, what, where, when, why, and how” to demonstrate that, if the allegations are true, his current claims are clearly stronger than the previous claims raised by his postconviction counsel. See *id.*, ¶58 (citation omitted). Without sufficient factual allegations, an evidentiary hearing is not warranted. *Id.*, ¶71. An evidentiary hearing “is not a fishing expedition to discover ineffective assistance; it is a forum to prove ineffective assistance.” *State v. Balliette*, 2011 WI 79, ¶68, 336 Wis. 2d 358, 805 N.W.2d 334.

In short, “[s]uccessive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose” of WIS. STAT. § 974.06, which is to promote “finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185.

Therefore, for the reasons described above, we conclude that Liggins’ claims are all procedurally barred. Accordingly, we affirm the circuit court’s order denying his WIS. STAT. § 974.06 motion without a hearing.

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