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DISTRICT I

March 26, 2019

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

2017AP1872-CR State of Wisconsin v. Terrance C. Harris (L.C. # 1996CF963312B)

Before Kessler, P.J., Brennan and Brash, 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).

Terrance C. Harris appeals from an order of the circuit court that denied his motion to vacate a restitution award. 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 (2017-18).¹ The order is summarily affirmed.

In September 1996, a jury convicted Harris on one count of first-degree intentional homicide and one count of attempted first-degree intentional homicide, both as a party to a crime. He was sentenced to life imprisonment, with parole eligibility beginning in 2031, plus a consecutive twenty years' imprisonment.² On May 27, 1997, the circuit court entered an order requiring Harris to pay \$2000 in restitution to the Crime Victim Compensation Program to reimburse it for amounts paid to the homicide victim's mother for funeral expenses.³ On December 16, 1997, Harris filed a notice of appeal. He did not challenge the restitution order as part of the appeal.

In April 2017, nearly twenty years after the restitution order was entered, Harris filed a "Motion to Vacate Restitution Order Pursuant to [the] Court's Inherent Power and Authority." After briefing and a short hearing, the circuit court denied the motion, noting that Harris had signed a stipulation to the restitution amount and "sat on this for a significant period of time. And the Court believes that the doctrine of laches would preclude him from raising the claim at this point. That there was an unreasonable delay in bringing the claim[.]"

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

² The sentence was later modified in 2000 to run the additional twenty years as a concurrent sentence and to allow the parole board to determine Harris's parole eligibility.

³ For reasons unknown, the specific amount of restitution was never incorporated into a judgment of conviction. The 1997 order for restitution, as well as a copy of a stipulation to the amount of restitution signed by Harris in April 1997, are in the record.

Harris appeals, complaining that restitution was not something that a trial court could order at the time of his offense in 1996 and that the trial court failed to follow statutory procedure for ordering restitution. The State suggests that it is not entirely clear which legal mechanism Harris is using to pursue relief and posits three possibilities, but believes that the motion is barred under any of them. The State also contends that Harris’s motion fails on the merits. We agree that the motion to vacate restitution is procedurally barred.⁴

Harris may be attempting to seek sentence modification under WIS. STAT. § 973.19. However, any such motion had to be brought either within ninety days of entry of the sentence or within sixty days of service of the final transcript. *See* § 973.19(1)(a)-(b); WIS. STAT. RULE 809.30(2)(h). The 2017 motion is well outside of these timeframes, so a § 973.19 sentence modification motion is not available.⁵

⁴ We also think it necessary to divest Harris of his belief that restitution could not be ordered in 1996. He argues that prior to the enactment of 1997 Wis. Act 181, §§ 60-61, 65, “restitution was not among rights enjoyed by crime victims in Wisconsin.” Section 65 created WIS. STAT. § 950.04(1v) (1997-98), a list of victims’ rights, including restitution. We note, however, that even prior to the act, restitution to victims was authorized by statute. *See* WIS. STAT. § 973.20(1r) (1995-96) (“When imposing sentence ... for any crime for which the defendant was convicted, the court ... *shall order the defendant to make full or partial restitution* under this section to any victim of a crime considered at sentencing[.]”) (emphasis added).

⁵ Harris makes a brief claim on appeal that the holding of *State v. Gribble*, 2001 WI App 227, 248 Wis. 2d 409, 636 N.W.2d 488, constitutes a new factor. A defendant who prevails on a new factor motion would receive sentence modification, *see State v. Harbor*, 2011 WI 28, ¶¶37-38, 333 Wis. 2d 53, 797 N.W.2d 828, and, because it is addressed to the circuit court’s inherent powers, a new factor motion is not subject to statutory time bars, *see State v. Noll*, 2002 WI App 273, ¶12, 258 Wis. 2d 573, 653 N.W.2d 895.

Aside from the fact that this argument is not developed on appeal, the “new factor” Harris alleges was the supposed holding in *Gribble* that victims were not entitled to restitution prior to 1997 Wis. Act 181. We have explained in footnote 4, *supra*, why restitution was available prior to the act, and we note that *Gribble* focuses on the act’s expansion of the definition of “victim” for purposes of restitution, not the availability of restitution generally. *See id.*, 248 Wis. 2d 409, ¶¶67-76.

Harris may have intended for his motion to fall under WIS. STAT. § 974.06, which permits some claims for relief to be brought after the time for appeal or other postconviction remedy has expired. These claims are generally limited to claims of a constitutional nature, *see* § 974.06(1), and Harris alleges the imposition of restitution in this case violated due process. But § 974.06 compels a defendant to raise all grounds regarding postconviction relief in his or her original, supplemental, or amended motion or appeal unless there is a sufficient reason for not doing so. *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Harris offers no reason for his failure to challenge the restitution order during his prior appeal.⁶ The 2017 motion is therefore barred by *Escalona*.

Finally, Harris may simply be attempting to invoke the circuit court's equitable powers. But this makes his claim subject to laches, an equitable defense based on a petitioner's unreasonable delay and prejudice to the respondent. *See Sawyer v. Midelfort*, 227 Wis. 2d 124, 159, 595 N.W.2d 423 (1999). The elements of laches are: (1) an unreasonable delay; (2) lack of knowledge by the party asserting the defense that the other party would bring the disputed claim; and (3) prejudice to the party asserting the defense. *See id.*; *see also State ex rel. Coleman v. McCaughtry*, 2006 WI 49, ¶¶20, 29, 290 Wis. 2d 352, 714 N.W.2d 900.

The circuit court expressly found that Harris unreasonably delayed in bringing his claim. Implicitly, the circuit court, which based its decision “upon the entire record” and “[u]pon the parties’ arguments,” also accepted the State’s written assertions that it was not aware Harris

⁶ We note that there was at least one other postconviction proceeding following Harris’s direct appeal; his sentence was modified in 2000 for cooperating with the State regarding charges against his brother. There was no challenge to restitution raised at that time either.

would claim that restitution was set by an unauthorized procedure and that it was prejudiced because its ability to locate relevant witnesses is “likely nonexistent.” Harris does not dispute that all the elements of laches are present, and we discern no erroneous exercise of discretion by the circuit court in applying the doctrine. *See Coleman*, 290 Wis. 2d 352, ¶17.

Upon the foregoing, therefore,

IT IS ORDERED that the order appealed from is summarily affirmed. *See WIS. STAT. RULE 809.21.*

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals