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DISTRICT IV

August 31, 2023

To:

Hon. Michael A. Haakenson
Circuit Court Judge
Electronic Notice

Daniel J. O'Brien
Electronic Notice

Amanda Nelson
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

Edward Dean Cox 599679
Waupun Correctional Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2021AP1607

State of Wisconsin v. Edward Dean Cox (L.C. # 2012CF105)

Before Blanchard, Graham, and Nashold, 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).

Edward Cox, pro se, appeals a circuit court order denying a postconviction motion he filed pursuant to WIS. STAT. § 974.06 (2021-22).¹ He seeks to overturn a judgment of conviction from 2013. Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). We affirm.

As reflected in the judgment of conviction, Cox was sentenced to a bifurcated prison term totaling fifty-five years on charges of armed robbery and kidnapping. In 2015, we summarily

¹ All references to the Wisconsin Statutes are to the 2021-22 version.

affirmed the judgment in a no-merit appeal. See *State v. Cox*, No. 2013AP2497-CRNM, unpublished op. and order (WI App Feb. 11, 2015). Our no-merit opinion addressed a variety of potential claims, including a number of claims that Cox raised in responses to the no-merit report. We concluded that none of the claims had arguable merit. Cox then filed a postconviction motion pursuant to WIS. STAT. § 974.06. The circuit court denied the motion. Several years later, Cox filed his current § 974.06 postconviction motion.

We affirm the circuit court’s order denying Cox’s current motion for two reasons. First, Cox’s arguments are not adequately developed. They lack legal development and have no record citations. Although we make some allowances for a pro se litigant, “[w]e cannot serve as both advocate and judge” by “making an argument for the litigant.” *State ex rel. Harris v. Smith*, 220 Wis. 2d 158, 165, 582 N.W.2d 131 (Ct. App. 1998); see also *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (“We may decline to review issues inadequately briefed.”); *Roy v. St. Lukes Med. Ctr.*, 2007 WI App 218, ¶10 n.1, 305 Wis. 2d 658, 741 N.W.2d 256 (“We have no duty to scour the record to review arguments unaccompanied by adequate record citation.”).

Second, to the extent that Cox identifies the nature of his claims, we agree with the State that the claims are procedurally barred. Some are barred because they were previously litigated in Cox’s no-merit appeal or previous postconviction motion. “A matter once litigated may not be relitigated in a subsequent postconviction proceeding 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). As to the rest of the claims, Cox has not established a “sufficient reason” for failing to raise them in the previous proceedings. Under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), “claims that could have been raised on direct appeal or in a previous [WIS.

STAT.] § 974.06 motion are barred from being raised in a subsequent § 974.06 postconviction motion absent a showing of a sufficient reason for why the claims were not raised on direct appeal or in a previous § 974.06 motion.” *State v. Lo*, 2003 WI 107, ¶44, 264 Wis. 2d 1, 665 N.W.2d 756.

Additionally, Cox has effectively conceded the procedural bar because he neither addressed it in his appellant’s brief nor filed a reply brief. *See United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (concluding that the appellant conceded an argument by failing to reply to it).

Therefore,

IT IS ORDERED that the circuit court’s order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Samuel A. Christensen
Clerk of Court of Appeals