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DISTRICT IV

May 9, 2024

To:

Hon. John M. Wood
Circuit Court Judge
Electronic Notice

Anne Christenson Murphy
Electronic Notice

Amanda Nelson
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

Anthony Hill 275127
Stanley Correctional Institution
100 Corrections Dr.
Stanley, WI 54768

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

2023AP842

State of Wisconsin v. Anthony Hill (L.C. # 2013CF1825)

Before Graham, Nashold, and Taylor, 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).

Anthony Hill appeals an order denying his postconviction motion that was filed under WIS. STAT. § 974.06.¹ 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 affirm.

After a jury trial in 2014, Hill was convicted of one count of armed robbery. His unsuccessful attempt to obtain postconviction relief under WIS. STAT. RULE 809.30 ended in

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

2018. In 2019, he filed a postconviction motion under WIS. STAT. § 974.06, the circuit court denied the motion, and we affirmed the circuit court's decision. Hill filed another motion under § 974.06 in 2023, which was also denied by the circuit court, and is the subject of the current appeal.

Our analysis focuses on a procedural bar. Whenever a defendant has already pursued a postconviction motion or direct appeal under WIS. STAT. RULE 809.30 or WIS. STAT. § 974.06, and then later files a postconviction motion under § 974.06, the threshold issue is whether the defendant has a sufficient reason for not having raised the claims he now raises in his original postconviction proceedings. *See* § 974.06(4); *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

Hill's claim relies in part on a factual allegation he makes in his most recent postconviction motion. He alleges that he hired a private investigator in 2018, who spoke with a juror from Hill's trial. Based on the juror's statements as reported by the investigator, Hill alleges that the juror correctly inferred that one of the trial witnesses was Hill's probation agent, even though the agent was not identified as such at trial.

As we understand it, the core of Hill's current claim is that, to the extent that the jury could infer that he was under the supervision of a probation agent, the jury would be able to draw the prejudicial inference that he had previously been convicted of a crime or crimes, and that trial counsel was ineffective by not objecting to the admission of the probation agent's testimony. To avoid the procedural bar described above, Hill must show sufficient reasons for not raising this claim in both his original and his 2019 postconviction proceedings.

As to the original postconviction proceeding, Hill argues that his postconviction counsel was ineffective by not conducting the investigation of jurors for which Hill himself later arranged. As mentioned, as a result of his investigation, Hill discovered that one of the jurors had inferred that the trial witness was Hill's probation agent. According to Hill, his postconviction counsel was ineffective for failing to discover this information, which could have been used to bolster an ineffective assistance of counsel claim against Hill's trial counsel. We need not decide whether postconviction counsel's alleged ineffectiveness is a sufficient reason for failing to raise this claim in the original postconviction proceedings because, as we now explain, Hill has not identified a sufficient reason for failing to raise this claim in his 2019 postconviction motion.

Hill makes the following argument about the 2019 postconviction motion. He argues that, although he obtained the juror investigation report in 2018, prior to filing the 2019 postconviction motion, it was not until after he filed that motion that he became aware of the report's potential significance. In other words, Hill argues that his sufficient reason for not raising this claim in 2019 is his own earlier failure to recognize the potential significance of the report.

We conclude that Hill has not shown a sufficient reason for not raising this claim in his 2019 postconviction motion. Hill does not cite any case law holding that a defendant's evolving comprehension about an existing report constitutes a sufficient reason for purposes of the procedural bar. Although it is possible that a new understanding of existing facts could be a sufficient reason under other circumstances, we are not persuaded that it is here. The report in question was obtained by Hill himself, and its contents related to an issue about the probation agent's testimony that was litigated in Hill's original postconviction proceeding. Therefore, the

report's potential significance could reasonably have been recognized at the time Hill filed the 2019 postconviction motion.

Hill also characterizes the investigator's report as "newly discovered evidence." However, that legal theory of relief relates to evidence that is relevant to the substance of the criminal charge itself, and that would be admissible at a potential new trial. *See State v. McAlister*, 2018 WI 34, ¶¶31-32, 380 Wis. 2d 684, 911 N.W.2d 77 (factors for a claim of newly discovered evidence include whether a reasonable probability exists that a different result would be reached in a trial, that is, that there is a reasonable probability that a jury, looking at both the old and the new evidence, would have a reasonable doubt as to the defendant's guilt). The evidence that Hill's investigator allegedly obtained about the juror at his trial is not relevant to whether Hill committed armed robbery, and would not be heard by a jury at a new trial, even if the evidence might be admissible in the postconviction context to show ineffective assistance of counsel.

IT IS ORDERED that the order of the circuit court is summarily affirmed under 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