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DISTRICT I

October 1, 2024

To:

Hon. John A. Franke
Reserve Judge

Daniel J. O'Brien
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Cornelius Blair 447251
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2022AP2038

State of Wisconsin v. Cornelius Blair (L.C. #2003CF184)

Before White, C.J., Geenen and Colón, 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).

Cornelius Blair, *pro se*, appeals from an order of the circuit court that denied his WIS. STAT. § 974.06 (2021-22)¹ postconviction motion without a hearing. 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. The order is summarily affirmed.

In November 2002, Blair and two co-defendants, all of whom were armed, invaded an elderly couple's home, robbed them, and executed the wife. In January 2003, Blair was charged

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

with one count of felony murder, with armed robbery as a party to a crime as the predicate felony. In July 2003, Blair pled guilty to the offense, and the circuit court imposed a sentence of forty-five years' initial confinement and fifteen years' extended supervision out of a possible maximum sentence of eighty years' imprisonment.

Blair did not pursue a postconviction motion, but his appellate attorney filed a no-merit report on his behalf. Blair did not respond. This court affirmed. *See State v. Blair*, No. 2004AP769-CRNM, unpublished op. and order (WI App Feb. 2, 2005). In 2009, Blair filed a postconviction motion to vacate the DNA surcharge imposed at sentencing. The motion was denied, and Blair did not appeal. In January 2022, Blair filed a motion to modify his sentence, arguing that he should have been sentenced under the Truth-in-Sentencing II (TIS-II) scheme, which had been enacted in July 2002² and which would have exposed him to a maximum sentence of only fifty-five years' imprisonment. *See generally* 2001 Wis. Act 109. The circuit court denied the motion, explaining that the applicable TIS-II changes to Wisconsin's sentencing rules were not effective until February 1, 2003;³ thus, TIS-II did not apply to Blair. In April 2022, Blair moved for reconsideration, which was also denied. Blair did not appeal.

In September 2022, Blair filed the WIS. STAT. § 974.06 postconviction motion that underlies this appeal, seeking plea withdrawal and resentencing. He claimed his plea had not

² TIS-II was part of Wisconsin's transition from indeterminate to determinate sentencing. *State v. Trujillo*, 2005 WI 45, ¶3, 279 Wis. 2d 712, 694 N.W.2d 933, *abrogated on other grounds by State v. Harbor*, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828. TIS-I took effect on December 31, 1999, while TIS-II took effect on February 1, 2003.

³ Specifically, amendments to the penalty provisions of the applicable statutes affected by 2001 Wis. Act 109 "first appl[ied] to offenses committed on the effective date" of § 9359(3), which was February 1, 2003. *See id.*, §9459(1). *See also State v. Cross*, 2010 WI 70, ¶11 n.5, 326 Wis. 2d 492, 786 N.W.2d 64.

been knowing, intelligent, and voluntary, because the circuit court incorrectly advised him that he was facing a maximum of sixty years' imprisonment for the armed robbery, rather than forty-years under TIS-II. He also argued that his trial attorney was ineffective for not realizing or arguing that TIS-II applied. The circuit court denied the motion because Blair had failed to raise either issue in response to the no-merit report during the direct appeal and because the TIS-II argument had been adjudicated in the January and April 2022 decisions. Blair appeals.

Blair has already litigated the issue of the applicable penalty statutes, as reflected by the January and April 2022 motions and decisions. However, “[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). Blair is therefore barred from again litigating this issue.

Even if Blair had not litigated this specific issue previously, any postconviction claim that could have been raised in a prior proceeding is barred in a subsequent proceeding, absent the defendant demonstrating a sufficient reason for the failure to raise the issue in the prior proceedings. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). Blair offers no reason, much less a sufficient reason, for his failure to raise his current issues in response to the no-merit report in 2004, *see State v. Tillman*, 2005 WI App 71, ¶20, 281 Wis. 2d 157, 696 N.W.2d 574, or as part of his motion in 2009. Accordingly, the circuit court did not err in denying Blair’s WIS. STAT. § 974.06 motion without a hearing.

Upon the foregoing, 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