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DISTRICT IV

October 9, 2013

To:

Hon. Roger A. Allen
Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2012AP545

State of Wisconsin v. Jeremy K. Adeyanju (L.C. # 2005CF1875)

Before Lundsten, Higginbotham and Sherman, JJ.

Jeremy Adeyanju appeals an order denying his motion for reconsideration of an order denying his postconviction motion filed under WIS. STAT. § 974.06 (2011-12).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 dismiss the appeal.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

The circuit court originally denied Adeyanju's postconviction motion on September 22, 2011. Motions under WIS. STAT. § 974.06 are civil in nature, § 974.06(6), and therefore are governed by the ordinary civil appeal time of ninety days. WIS. STAT. § 808.04(1). We cannot extend the time to file an appeal in a civil matter. WIS. STAT. RULE 809.82(2)(b). Adeyanju's notice of appeal was filed on March 12, 2012, and therefore is untimely as to the original order denying his postconviction motion. Without a timely notice of appeal, we lack jurisdiction to review the order. WIS. STAT. RULE 809.10(1)(e).

Although the notice of appeal is untimely from the original order denying the postconviction motion, it is timely from the order denying Adeyanju's motion for reconsideration. However, to prevent reconsideration from being used to extend the time to appeal, an appeal cannot be taken from an order denying a motion for reconsideration if the motion presents the same issues as those determined in the order sought to be reconsidered. *See Silvertown Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). In this case, we ordered the parties to address in their briefs whether Adeyanju's motion for reconsideration presented the same issues as those determined in the original denial order.

Adeyanju argues that his reconsideration motion did not present the same issues because the issue in the reconsideration motion was whether the circuit court gave a sufficient explanation in its original denial of the motion. However, we do not regard lack of explanation as a new substantive issue. By asking the court to give a better explanation on issues it already decided, a motion for reconsideration on this ground unavoidably qualifies as a motion that presents only the same substantive issues as those determined in the original order. Therefore, the reconsideration order is not appealable, and this appeal must be dismissed without further consideration of the merits.

IT IS ORDERED that the order appealed from is summarily dismissed.

Diane M. Fremgen
Clerk of Court of Appeals