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DISTRICT III

March 4, 2014

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

2013AP1106

State of Wisconsin v. Miquel D. Brown (L.C. # 2002CF59)

Before Hoover, P.J., Mangerson and Gundrum, JJ.

Miquel Brown, pro se, appeals an order denying his WIS. STAT. § 974.06¹ motion for postconviction relief. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We reject Brown's arguments, and summarily affirm the order. *See* WIS. STAT. RULE 809.21.

In 2005, this court affirmed Brown's convictions for two counts of delivering cocaine and one count of possessing more than fifteen grams of cocaine with intent to deliver. *State v.*

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

Brown, No. 2003AP3257-CR, unpublished slip op. ¶1 (WI App Feb. 8, 2005). In doing so, we rejected Brown’s challenge to what he described as a defective amended information. Specifically, Brown claimed the circuit court erred by allowing the prosecution to amend the information to add the possession charge. Brown subsequently filed numerous postconviction motions and appeals, each time raising the same issue.

In October 2012, the circuit court amended the judgment of conviction to correct a clerical error—namely, to correct the statutory citation for Brown’s possession conviction. Brown subsequently filed the underlying postconviction motion, challenging what he characterized as a “constructive amendment” to the information. The circuit court summarily denied the motion, and this is now Brown’s sixth appeal claiming the information was improperly amended.

We conclude Brown’s argument is procedurally barred by WIS. STAT. § 974.06(4) and *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Successive motions and appeals are procedurally barred unless the defendant can show a sufficient reason why the newly-alleged errors were not previously raised. *Id.* at 185. Here, Brown provides no legitimate reason why his claim is not procedurally barred. The trial court’s correction of a clerical error on Brown’s judgment of conviction does not open the door for Brown to again raise an issue that has been previously litigated and rejected by this court on five previous occasions. A defendant may not relitigate a matter previously litigated, “no matter how artfully the defendant may rephrase the issue.” *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE
809.21.

Diane M. Fremgen
Clerk of Court of Appeals