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**DISTRICT II**

March 19, 2014

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

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2013AP28-CR

State of Wisconsin v. Jeremiah J. Grube (L.C. # 2004CF1)

Before Brown, C.J., Reilly and Gundrum, JJ.

Jeremiah J. Grube appeals pro se from an order denying his motion for postconviction relief. He contends that the circuit court erred by denying his 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 (2011-12).<sup>1</sup> We affirm the order of the circuit court.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version.

In 2009, Grube was sentenced after revocation in two cases. In Calumet County case No. 2003CF142, the circuit court imposed a three-year sentence for the crime of felony bail jumping. In Calumet County case No. 2004CF1, the court imposed consecutive ten-year sentences for the crimes of delivery of cocaine and possession with intent to deliver cocaine. The judgment in that case was later amended to nine-year sentences.

Grube appealed from the amended judgment of conviction in Calumet County case No. 2004CF1. He challenged his sentence after revocation by suggesting that the circuit court had not ordered a withheld sentence at the original sentencing hearing.<sup>2</sup> He also raised double jeopardy concerns. Ultimately, we rejected Grube's arguments and affirmed the amended judgment. *See State v. Grube*, No. 2010AP2229-CR, unpublished slip op. (WI App Sept. 21, 2011).

In November 2012, Grube filed a motion for postconviction relief.<sup>3</sup> In that motion, Grube alleged that (1) his sentence was based on inaccurate information; (2) the circuit court erroneously denied Grube and his counsel access to a presentence investigation report; and (3) the circuit court erroneously exercised its sentencing discretion. The circuit court denied Grube's motion without a hearing. This appeal follows.

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<sup>2</sup> Because of a discrepancy between the oral sentencing pronouncement and written judgment of conviction, there was a dispute as to whether circuit court had originally withheld sentence or ordered an imposed and stayed sentence for one of the counts in Calumet County case No. 2004CF1.

<sup>3</sup> Although Grube described his postconviction motion as being brought pursuant to WIS. STAT. § 973.19, he cannot rely on that statute because he did not file his motion within ninety days of sentencing. *See* WIS. STAT. § 973.19(1)(a). Accordingly, we construe his postconviction motion as being brought pursuant to WIS. STAT. § 974.06.

“We need finality in our litigation.” *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Therefore, any claim that could have been raised in a prior postconviction motion or direct appeal cannot form the basis for a subsequent motion under Wis. STAT. § 974.06 unless the defendant demonstrates a sufficient reason for failing to raise the claim earlier. *Escalona-Naranjo*, 185 Wis. 2d at 185. Whether an appeal is procedurally barred from review pursuant to *Escalona-Naranjo* is a question of law which we review de novo. *State v. Tillman*, 2005 WI App 71, ¶14, 281 Wis. 2d 157, 696 N.W.2d 574.

Examining Grube’s motion for postconviction relief, we conclude that it is procedurally barred from review. As noted by the State, Grube provides no reason for why he failed to raise his current claims in his prior appeal. Accordingly, we are satisfied that the circuit court properly denied Grube’s motion.

Upon the foregoing reasons,

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

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*