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DISTRICT III

June 17, 2014

To:

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

2013AP1984

Bill P. Marquardt v. Greg Van Rybroek (L. C. No. 2013CV374)

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

Bill Marquardt, pro se, appeals an order denying his petition for a writ of habeas corpus. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We reject Marquardt's arguments, and summarily affirm the order. *See* WIS. STAT. RULE 809.21.¹

In Eau Claire County Circuit Court case No. 2000CF137, a jury found Marquardt guilty of seven counts of mistreatment of animals, two counts of possession of a firearm by a felon and one count of aggravated burglary. On the State's stipulation, Marquardt was found not guilty by

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

reason of mental disease or defect and was committed to institutional care for a period not to exceed seventy-five years. DNA evidence discovered in his case was used to tie Marquardt to a double murder in Florida.

Following his initial direct appeals, Marquardt filed a WIS. STAT. § 974.06 motion claiming he was entitled to a new trial based on newly discovered evidence and ineffective assistance of counsel. The denial of that motion was affirmed on appeal. See *State v. Marquardt*, No. 2009AP76, unpublished slip op. (WI App Oct. 14, 2009). Marquardt also challenged the effectiveness of his counsel in a habeas petition to our supreme court. That petition was denied in a September 1, 2011 order. Marquardt then filed the underlying petition for a writ of habeas corpus. The circuit court denied the petition without a hearing, and this appeal follows.

The circuit court may deny a postconviction motion without a hearing if the motion fails to allege sufficient material facts that, if true, warrant relief, or if the allegations are merely conclusory, or if the record conclusively shows that the defendant is not entitled to relief. See *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. The State argues that Marquardt's claims are procedurally barred, and we agree.

[I]n a postconviction setting, a petition for [a] writ of habeas corpus will not be granted where (1) the petitioner asserts a claim that he or she could have raised during a prior appeal, but failed to do so, and offers no valid reason to excuse such failure, or (2) the petitioner asserts a claim that was previously litigated in a prior appeal or motion after verdict.

State v. Pozo, 2002 WI App 279, ¶9, 258 Wis. 2d 796, 654 N.W.2d 12 (citations omitted).

Marquardt's underlying petition alleged that his postcommitment counsel was ineffective on several grounds, including a failure to challenge the effectiveness of trial counsel. The effectiveness of Marquardt's postcommitment counsel, however, was raised in both the WIS. STAT. § 974.06 motion and Marquardt's habeas petition to our supreme court. As noted above, this court affirmed the denial of Marquardt's § 974.06 motion and our supreme court denied his habeas petition. Marquardt may not use his present petition for a writ of habeas corpus to relitigate issues he previously raised. To the extent Marquardt raises new issues, he offers no valid reason for his failure to raise them previously. Because Marquardt's claims are procedurally barred, the circuit court properly denied the petition without a hearing.

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