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DISTRICT III/IV

April 16, 2015

To:

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

2014AP1752

State of Wisconsin v. Joseph Wayne Evans, Jr. (L.C. # 2008CF123)

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

Joseph Evans appeals an order denying his postconviction motion filed under WIS. STAT. § 974.06 (2013-14).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 affirm.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Evans filed an earlier pro se motion under WIS. STAT. § 974.06 in August 2012. The circuit court denied the motion, and in January 2014 we affirmed that denial on appeal. Evans filed his current postconviction motion in July 2014, and the circuit court denied it.

A defendant is barred from filing a second motion under WIS. STAT. § 974.06 unless the defendant provides a “sufficient reason” for not having made the new claims in the earlier motion. *See State ex rel. Dismuke v. Kolb*, 149 Wis. 2d 270, 274, 441 N.W.2d 253 (Ct. App. 1989); § 974.06(4). Evans argues that ineffective assistance of appellate counsel was a sufficient reason for him not having raised his current issues earlier. However, that argument fails because his previous motion under § 974.06 was pro se. No counsel was ineffective in the litigating of that motion.

Evans also argues that his own unawareness of the new claims is a sufficient reason. However, Evans does not explain what law or facts related to his current issues he is claiming to have been unaware of at the time of his earlier motion under WIS. STAT. § 974.06.

IT IS ORDERED that the order appealed is summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals