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DISTRICT IV

November 3, 2015

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

2014AP2116	State of Wisconsin v. George H. Peters (L.C. # 1990CF517)
2014AP2117	State of Wisconsin v. George H. Peters (L.C. # 1990CF566)

Before Lundsten, Higginbotham and Sherman, JJ.

George Peters appeals orders denying his WIS. STAT. § 974.06 (2013-14)[1] postconviction motions without a hearing. He argues: (1) the State presented insufficient evidence at his 1991 trial to support the jury's verdict convicting him of felon in possession of a firearm; (2) the jury

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

instructions in effect at the time improperly created a mandatory conclusive presumption; (3) the trial court committed plain error by reading the full information to the jury; and (4) the sentences exceed the maximum permitted by law. He further argues that he established sufficient reason for his failure to have raised these issues in his previous postconviction proceedings because his postconviction counsel was ineffective and because Peters did not know the legal basis for these arguments in his previous pro se postconviction motion. Upon our review of the parties' briefs and the record, we conclude at conference that the orders should be summarily affirmed.

At his 1991 trial, the jury convicted Peters of two counts of armed robbery and two counts of felon in possession of a firearm, all as a repeat offender. Represented by counsel, he filed a postconviction motion which the circuit court denied in 1993. This court affirmed the judgments and order in 1994, and the supreme court denied the petition for review in 1995. In 2006, this court denied Peters' petition for a writ of habeas corpus. In 2008, Peters filed a pro se motion under WIS. STAT. § 974.06, arguing in part that he was sentenced based on inaccurate information regarding his prior convictions and "[t]rial counsel failed to object or to correct the trial court sentencing of defendant to a sentence that exceeded the maximum authorized by law." The circuit court dismissed the motion and this court affirmed the order in 2009. The supreme court denied Peters' motion for a supervisory writ and his petition for review of that decision. In 2012, again represented by counsel, Peters brought the present motions which the circuit court denied, without a hearing, concluding that the issues he raises in this appeal had been previously decided by this court.

The circuit court properly denied the present motions without a hearing because the record conclusively shows that Peters is not entitled to any relief. *See* ***State v. Bentley***, 201 Wis. 2d 303, 309-11, 548 N.W.2d 50 (1996). Peters' first three issues are barred by the rule

against successive postconviction motions set out in ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994), because he has not established sufficient reason for his failure to have raised them in his 2008 pro se postconviction motion. Because we rely on the pro se motion, we need not review his claim that his initial postconviction counsel was ineffective for failing to raise the same issues. We reject Peters contention that his lack of legal knowledge or inartful presentation of the issues in his pro se motion constitutes sufficient reason for his failure to raise these issues in the 2008 motion. If a defendant's lack of awareness of an issue constituted sufficient reason for allowing successive postconviction motions, the exception would swallow the rule. The court would have no way of knowing whether a defendant was aware of a particular claim at the time he filed an earlier postconviction motion.

Peters correctly asserts that his fourth issue, seeking commutation for a sentence that exceeds the maximum, is not subject to the same ***Escalona-Naranjo*** procedural bar. However, his claim has already been litigated in his 2008 postconviction motion and appeal. In his brief submitted to this court in 2009AP396 and 2009AP397, he argued in part "the court imposed a sentence in excess of that authorized by law." He cited WIS. STAT. § 973.13 and the same case law his attorney relies upon in the present appeal. That issue cannot be relitigated no matter how artfully it is rephrased. ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

IT IS ORDERED that the orders are summarily affirmed. WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals