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DISTRICT I

February 16, 2016

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

2015AP946 State of Wisconsin v. Lamont Elliot Moore (L.C. #1992CF924027)

Before Curley, P.J., Kessler and Brash, JJ.

Lamont Elliot Moore, *pro se*, appeals from an order denying a postconviction motion seeking a new trial. He alleges he has newly discovered evidence, the State violated his right to due process, and he is entitled to a new trial in the interest of justice. Upon our review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).[1] We summarily affirm the order.

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

In 1992, the Milwaukee County juvenile court waived jurisdiction over Moore, and the State subsequently filed a criminal complaint against him in Milwaukee County circuit court. The matter proceeded to trial in 1993, and a jury found Moore guilty of first-degree intentional homicide as a party to a crime.

Moore pursued an appeal with the assistance of counsel. Counsel filed a no-merit report and Moore filed a response. We summarily affirmed the conviction, concluding that the appeal did not present any meritorious issues. *See* ***State v. Moore***, No. 1993AP2648-CRNM, unpublished op. and order (WI App Aug. 30, 1994) (***Moore I***). Thereafter, Moore filed a series of unsuccessful postconviction motions, and we affirmed orders rejecting his *pro se* claims in ***State v. Moore***, No. 1999AP1706, unpublished op. and order (WI App July 7, 2000) (***Moore II***), ***State v. Moore***, No. 2001AP1596, unpublished op. and order (WI App June 4, 2002) (***Moore III***), ***State v. Moore***, No. 2005AP2037, unpublished slip op. (WI App May 15, 2007) (***Moore IV***), ***State v. Moore***, No. 2011AP1071-CR, unpublished op. and order (WI App Apr. 25, 2012) (***Moore V***), and ***State v. Moore***, No. 2012AP2009, unpublished slip op. (WI App June 18, 2013) (***Moore VI***).

On April 3, 2015, Moore filed the postconviction motion underlying the instant appeal. The circuit court denied relief, concluding that Moore failed to identify any newly discovered evidence and that his constitutional claims were barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). He appeals.

We begin by examining Moore's newly discovered evidence claim. He asserts that he conducted a "records review" after a circuit court clerk in 2014 filled his request for copies of documents from his circuit court file. During that review, he says, he realized that the copy of

the Petition for Determination of Status-Alleged Delinquent Child—the delinquency petition—attached to the criminal complaint was not signed as required by WIS. STAT. § 48.25 (1991-92).[2] He contends that the absence of a signature is newly discovered evidence about the procedure used to prosecute him for homicide. Relatedly, he points to certain statements made by a lay witness and by a medical examiner that were included in the delinquency petition. Moore contends that the statements constitute newly discovered evidence about the cause of the victim's death.

A defendant seeking a new trial on the basis of newly discovered evidence must establish "by clear and convincing evidence that '(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative.'" ***State v. Love***, 2005 WI 116, ¶43, 284 Wis. 2d 111, 700 N.W.2d 62 (citation omitted). If the defendant satisfies these four criteria, "'the circuit court must determine whether a reasonable probability exists that a different result would be reached in a trial.'" ***Id.***, ¶44 (citation omitted).

Whether a party has satisfied an applicable burden of proof is a question of law. *See* ***State v. Horton***, 151 Wis. 2d 250, 260, 445 N.W.2d 46 (Ct. App. 1989). Here, Moore fails as a matter of law to show that he was diligent in the pursuit of the evidence he claims is new. The delinquency petition is attached to and incorporated by reference in the criminal complaint that the State filed in this matter in November 1992. Accordingly, the petition and its contents were readily available to the defense from the outset of the proceedings. Indeed, the record reflects

[2] All references to WIS. STAT. § 48.25 are to the 1991-92 version.

that the defense received a copy of the complaint when Moore made his initial appearance more than twenty-three years ago. Because Moore fails to show that the allegedly newly discovered evidence satisfies the second ***Love*** criterion, we address this issue no further.

Moore next asserts that he was denied his state and federal constitutional rights to due process. In support of this contention, Moore argues that because the delinquency petition does not comply with the signature requirement of WIS. STAT. § 48.25, the juvenile court did not have competency to proceed and thus was unable to waive jurisdiction over him. He concludes that the State could not prosecute him in circuit court.

WISCONSIN STAT. § 974.06 is the mechanism for an incarcerated inmate to raise constitutional claims after the time for a direct appeal has passed. *See* ***State v. Henley***, 2010 WI 97, ¶¶52-53, 328 Wis. 2d 544, 787 N.W.2d 350. The opportunity to bring such claims is limited, however, because "[w]e need finality in our litigation." *See* ***Escalona-Naranjo***, 185 Wis. 2d at 185. Therefore, a convicted defendant may not bring postconviction claims under § 974.06 if the defendant could have raised the issues in a previous postconviction motion or on direct appeal unless the defendant states a "'sufficient reason'" for failing to raise those issues. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 181-82 (citation omitted). Whether a defendant offered the circuit court a sufficient reason to avoid the procedural bar imposed by § 974.06(4) is a question of law that we review *de novo*. *See* ***State v. Kletzien***, 2011 WI App 22, ¶16, 331 Wis. 2d 640, 794 N.W.2d 920.

Moore suggests that he did not previously raise the constitutional issues he presents now because, at the time he filed his prior postconviction motions, he had not reviewed the contents

of the delinquency petition attached to the criminal complaint.[3] A *pro se* litigant, however, is generally held to the same standard that governs attorneys, *see* ***Waushara County v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992), and "[t]he appellate lawyer must master the trial record, thoroughly research the law, and exercise judgment in identifying the arguments that may be advanced on appeal," ***McCoy v. Court of Appeals***, 486 U.S. 429, 438 (1988). Moore's failure to examine the documents in his own record and to determine their alleged significance before filing his many prior postconviction motions is thus not a sufficient reason to permit him to pursue yet another collateral attack on his conviction.

Moreover, the circuit court examined Moore's juvenile court file in response to Moore's most recent claims and found that the original delinquency petition bears the district attorney's signature. The circuit court may, pursuant to WIS. STAT. § 902.01(2)(b), take judicial notice of facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *See* ***id.*** Such sources include the contents of court files maintained by the juvenile court branch of the Milwaukee County circuit court.[4] *See* ***Teacher Ret. Sys. v. Badger XVI Ltd. P'ship***, 205 Wis. 2d 532, 540 n.3, 556 N.W.2d 415 (Ct. App. 1996). Accordingly, we defer to the circuit court's factual finding that the original delinquency petition

[3] In the postconviction motion underlying this appeal, Moore stopped short of claiming that he never saw the complaint and its attachments until 2014, but he asserted that his appointed appellate counsel delayed giving him a copy of the record until 1995 and then provided only the "proceedings stemming from the trial itself." Nonetheless, the record shows that Moore supported prior *pro se* postconviction motions with a variety of pretrial documents, including copies of the information, the amended information, a pretrial scheduling order, and a motion for a continuance. If Moore's appellate counsel did not give him copies of pretrial documents, then the record reflects that Moore was able to obtain copies of pretrial documents in some other way before filing a postconviction motion.

[4] We observe that, during trial, the State similarly arranged to have Moore's juvenile court file delivered to the courtroom to permit Moore's trial counsel to compare a copy of a letter with an original letter that Moore sent to a juvenile court judge.

is properly signed. *See* ***Deutsches Land, Inc. v. City of Glendale***, 225 Wis. 2d 70, 80, 591 N.W.2d 583 (1999).

Finally, Moore asks us to grant a new trial in the interest of justice. We exercise our discretionary power to set aside a conviction only rarely and only in exceptional cases. *See* ***State v. Avery***, 2013 WI 13, ¶38, 345 Wis. 2d 407, 826 N.W.2d 60. Here, Moore's request for discretionary reversal merely restates the claims that we have rejected in this opinion because they are procedurally barred and rest on evidence that does not qualify as newly discovered. These claims do not amount to the exceptional circumstances necessary to earn Moore the extraordinary relief he seeks.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals