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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

March 16, 2016

To:

Hon. Lloyd Carter
Circuit Court Judge
Waukesha County Circuit Court
515 W. Moreland Blvd.
Waukesha, WI 53188

Kathleen A. Madden
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Susan Lee Opper
District Attorney
515 W. Moreland Blvd., Rm. G-72
Waukesha, WI 53188-2486

Christine A. Remington
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Aman D. Singh
5685 W. Upham Ave.
Greenfield, WI 53220

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

2014AP2995

State of Wisconsin v. Aman D. Singh (L.C. #2008CF1368)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Aman D. Singh appeals pro se from an order denying his motion for postconviction relief. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2013-14).¹ We affirm the order of the circuit court.²

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

² Upon completion of briefing, Singh filed a motion to appoint counsel, which was held in abeyance. We now deny that motion.

In March 2010, Singh was convicted following a guilty plea to one count of obtaining possession of a controlled substance by fraud. Since then, Singh has filed numerous motions and petitions related to his conviction.³ We discuss them only as necessary in this opinion.

In May 2010, Singh filed a *pro se* notice of intent to pursue postconviction relief and a motion to withdraw his plea. In his motion, Singh maintained that his pretrial drug testing as a condition of bail violated the Fourth Amendment.⁴ Following a hearing on the matter, the circuit court denied the motion. Singh did not appeal that decision.

In June 2013, Singh filed a *pro se* petition for a writ of habeas corpus in this court. He complained that he was denied postconviction counsel. We dismissed the petition because it failed to satisfy the pleading requirements. However, we also noted that, on the merits, Singh's argument failed.

In March 2014, Singh filed another *pro se* petition for a writ of habeas corpus in this court. Again, he complained that he was denied postconviction counsel. Again, we rejected his argument on the merits. We observed:

The circuit court docket entries confirm that Singh undertook WIS. STAT. RULE 809.30 proceedings *pro se* before the State Public Defender reported to the circuit court that Singh's request for appointed counsel had been denied. There is no basis in the docket entries for any claim that Singh was denied a right to appointed postconviction counsel before he litigated his postconviction

³ Singh filed a WIS. STAT. RULE 809.30 postconviction motion, a sentence modification motion, a sentence credit motion, three petitions for positive adjustment time, five petitions for a writ of habeas corpus, two petitions for a supervisory writ, and one prior WIS. STAT. § 974.06 motion.

⁴ Singh tested positive for drugs multiple times while out on bail. He argues that the test results resulted in a coerced plea.

motion.... Singh does not offer this court any record supporting his claim that he was denied a right to appointed postconviction counsel or that he even had a right to appointed postconviction counsel on the grounds of indigency.

(Footnote omitted).

In June 2014, Singh submitted another motion to withdraw his plea in the circuit court under WIS. STAT. § 974.06. He renewed his claims that his pretrial drug testing violated the Fourth Amendment and that he was denied postconviction counsel. He also argued that he was entitled to plea withdrawal due to changes in the law pertaining to early release eligibility. Following a hearing on the matter, the court denied Singh's motions. This appeal follows.

On appeal, Singh contends that the circuit court erred in denying his latest postconviction motion. He also raises two new claims: (1) the statute he was convicted of violating, WIS. STAT. § 961.43(1)(a), has been repealed by implication; and (2) the crime of obtaining possession of a controlled substance by fraud imposes cruel and unusual punishment for drug addicts like himself.

“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. Further, a defendant may not relitigate a matter previously litigated, “no matter how artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Applying these principles to the case at hand, we conclude that Singh's latest challenge to his conviction is procedurally barred. The issues of whether Singh's pretrial drug testing

violated the Fourth Amendment and whether Singh was denied postconviction counsel were already litigated and cannot be relitigated now. *Id.* As for any other new issues raised in Singh’s postconviction motion or appellant’s brief, he has not demonstrated a sufficient reason for failing to raise them earlier. *See Escalona-Naranjo*, 185 Wis. 2d at 185.⁵ Accordingly, we are satisfied that the circuit court properly denied Singh’s motion.⁶

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals

⁵ Singh’s argument that WIS. STAT. § 961.43(1)(a) has been repealed by implication presents a challenge to the circuit court’s subject matter jurisdiction. Such a challenge cannot be waived. *See Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶¶24-25, 273 Wis. 2d 76, 681 N.W.2d 190. However, “[i]mplied repeal of statutes by later enactments is not favored in statutory construction.” *State v. Black*, 188 Wis. 2d 639, 645, 526 N.W.2d 132 (1994). Nothing in Singh’s appellant’s brief persuades us that § 961.43(1)(a) has been impliedly repealed by the legislature.

⁶ To the extent we have not addressed an argument raised by Singh on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).