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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

July 6, 2016

To:

Hon. Scott C. Woldt
Circuit Court Judge
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903-2808

Melissa M. Pingel
Clerk of Circuit Court
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Christian A. Gossett
District Attorney
P. O. Box 2808
Oshkosh, WI 54903-2808

Michael C. Sanders
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Kenneth S. Shong 180137
Redgranite Corr. Inst.
P.O. Box 925
Redgranite, WI 54970-0925

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

2015AP1949

State of Wisconsin v. Kenneth S. Shong (L.C. # 2012CF8)

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

Kenneth S. Shong 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.

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

In 2012, Shong was convicted following a bench trial of fraudulent writings as party to a crime and as a repeater. The circuit court sentenced him to seven years of initial confinement followed by three years of extended supervision.

In 2015, this court affirmed Shong's conviction. *State v. Shong*, No. 2014AP317-CRNM, unpublished op. and order (WI App June 17, 2015). In doing so, we concluded that there were no issues of arguable merit in Shong's case. Accordingly, we accepted counsel's no-merit report and relieved her of further representation.

Approximately one month after the release of our no-merit decision, Shong filed a motion for postconviction relief pursuant to WIS. STAT. § 974.06. In it, he raised five issues: (1) insufficient evidence at trial, (2) ineffective assistance of trial counsel, (3) erroneous admission of testimony by video conference, (4) prosecutorial misconduct, and (5) that the circuit court lacked subject matter jurisdiction. The circuit court denied Shong's motion without a hearing. This appeal follows.

On appeal, Shong contends that the circuit court erred in denying his motion for postconviction relief. He renews the claims made in his motion and seeks either an evidentiary hearing or a vacating of his conviction.

"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. This procedural bar applies even if the direct appeal was a no-merit appeal. See *State v. Tillman*, 2005 WI App 71, ¶19, 281 Wis. 2d

157, 696 N.W.2d 574. Furthermore, a defendant may not again raise issues that were addressed in the no-merit decision. *Id.*

Applying these principles to the case at hand, we conclude that Shong's postconviction motion is procedurally barred. As noted by the State, three of issues that Shong raised in his motion were addressed in this court's no-merit decision. There, we rejected claims of insufficient evidence, ineffective assistance of counsel, and the erroneous admission of testimony by video conference. *Shong*, 2014AP317-CRNM, unpublished op. and order at 3-8. Shong cannot raise them again now. *Tillman*, 281 Wis. 2d 157, ¶19. As for the remaining issues in Shong's motion, he has not demonstrated a sufficient reason for failing to raise them earlier.² Accordingly, we are satisfied that the circuit court properly denied Shong's motion.³

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

² Shong's challenge to the circuit court's subject matter jurisdiction cannot be waived. *State v. Bush*, 2005 WI 103, ¶19, 283 Wis. 2d 90, 699 N.W.2d 80. However, nothing in Shong's motion or brief persuades us that such a challenge has merit. A "circuit court lacks criminal subject[]matter jurisdiction only where the complaint does not charge an offense known to law." *State v. Aniton*, 183 Wis. 2d 125, 129, 515 N.W.2d 302 (Ct. App. 1994). Here, the complaint charged the offense of fraudulent writings, which is plainly known to law. See WIS. STAT. § 943.39.

³ Shong also criticizes our no-merit decision for relying on *State v. Weister*, 125 Wis. 2d 54, 61, 370 N.W.2d 278 (Ct. App. 1985), which held that WIS. STAT. § 943.39 does not require proof of a forgery. Shong suggests that *Weister* was wrongly decided. We are obligated to follow existing precedent of this court. See *Cook v. Cook*, 208 Wis. 2d 166, 190, 560 N.W.2d 246 (1997).