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DISTRICT IV

October 24, 2016

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

2015AP2275

State of Wisconsin v. Paul G. Zarter (L.C. # 2007CF106)

Before Lundsten, Sherman, and Blanchard, JJ.

Paul Zarter 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.

In Zarter's direct appeal under WIS. STAT. RULE 809.30, he argued that he was improperly deprived of his right to counsel at trial when the circuit court ruled that he forfeited that right. We affirmed the court's ruling.

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

Zarter now argues that the circuit court erred in denying his current postconviction motion based on its conclusion that the issue he is currently trying to raise was already litigated in the direct appeal. Zarter argues that any such procedural bar is overcome by the fact that he is making a claim of actual innocence.

We conclude that even if Zarter is correct that a claim of actual innocence would allow him to relitigate the deprivation of counsel issue, Zarter has not developed such a claim in this appeal. His brief states only that he has acquired additional evidence, not obtained by his dismissed trial attorneys, and that the new evidence shows that he did not commit, and could not have committed, the charged crime. His argument contains no specific description of that evidence or how it would affect the State's case. We conclude that his mere assertion of actual innocence, in the absence of a developed claim, does not overcome the procedural bar.

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

Diane M. Fremgen
Clerk of Court of Appeals