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DISTRICT II

December 14, 2016

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

2015AP2072   State of Wisconsin v. Jeffrey L. Mosley (L.C. # 1993CF364)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Jeffrey L. Mosley 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.

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

Mosley was convicted following a jury trial of six counts of delivery of cocaine base. The circuit court sentenced him to an indeterminate sentence totaling fourteen years and imposed and stayed a sentence of eighteen years to run consecutive to the prison sentence.

This court affirmed Mosley's conviction. *State v. Mosley*, 201 Wis. 2d 36, 547 N.W.2d 806 (Ct. App. 1996). In doing so, we rejected his arguments that (1) the circuit court erroneously exercised its discretion at sentencing, (2) the court erroneously exercised its discretion when it allowed him to be represented by out-of-state counsel who had available local co-counsel, (3) he was denied the effective assistance of trial counsel, and (4) he was improperly excluded from the preliminary hearing. *See id.* at 41-42.

Mosley subsequently filed a pro se WIS. STAT. § 974.06 motion, alleging a violation of his due process and equal protection rights. The circuit court denied the motion without a hearing. Mosley then filed a pro se motion to modify sentence, which the court also denied.

Eventually, Mosely filed a second pro se WIS. STAT. § 974.06 motion which is the subject of this appeal. In it, he accused both his trial and postconviction counsel of ineffective assistance. Again, the circuit court denied the motion without a hearing. This appeal follows.

On appeal, Mosley contends that the circuit court erred in denying his latest motion for postconviction relief. He renews the claims made in his motion and seeks an evidentiary hearing on them.

"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. Whether a defendant's claim is procedurally barred by *Escalona-Naranjo* presents a question of law that we review de novo. *State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

Applying these principles to the case at hand, we conclude that Mosley's latest postconviction motion is procedurally barred. As noted by the State, Mosley could have raised his claims of ineffective assistance of counsel in his first pro se WIS. STAT. § 974.06 motion. Because he has not demonstrated a sufficient reason for failing to do so, we are satisfied that the circuit court properly denied his motion.

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