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January 18, 2017

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

2015AP1981-CR State of Wisconsin v. Mark A. Stephens (L.C. #2002CF886)

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

Mark Stephens, pro se, appeals the denial of court appointed counsel and the denial of his request for resentencing on the grounds that his presentence investigation report (PSI) was incomplete. 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 (2013-14).¹ We affirm as a defendant does not have a constitutional right to counsel on a WIS. STAT. § 974.06

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

motion, *State ex rel. Warren v. Schwarz*, 219 Wis. 2d 615, 649, 579 N.W.2d 698 (1998), and *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), precludes this appeal as Stephens does not provide a sufficient reason for his failure to raise the issue in his prior direct appeal. We further find no merit to Stephens' argument.

Stephens pled guilty to armed burglary in December 2005 as a result of his entering the home of D.B. on August 22, 2002, and threatening D.B. with a knife, then striking D.B. in the head with the knife and forcing D.B. onto her bed where he demanded money. D.B. suffered numerous injuries to her head and body. Stephens was sentenced to twenty years of initial confinement and twenty years of extended supervision.

Stephens, in his direct appeal, challenged whether the State breached the plea agreement at sentencing and whether his counsel was ineffective for not objecting at sentencing to the State's comments regarding what the presentence report recommended as a sentence. We affirmed the circuit court's denial of these issues in our opinion issued on April 23, 2008. *State v. Stephens*, No. 2006AP2809, unpublished slip op. ¶16 (WI App Apr. 23, 2008).

We first dispense with Stephens' request for appointed counsel. Stephens does not have a constitutional right to counsel when mounting a WIS. STAT. § 974.06 collateral attack on his conviction. *Schwarz*, 219 Wis. 2d at 649. The court, however, retains the discretion to appoint counsel to an indigent defendant during § 974.06 postconviction proceedings. *Id.* The circuit court denied Stephens' request for appointed counsel as it found that the motion was "without merit" and the "issues have been litigated over the course of the last decade regarding presentence matters." The circuit court properly exercised its discretion in denying appointed

counsel as it reached a reasonable conclusion based on the facts in evidence. See *State v. Campbell*, 2006 WI 99, ¶27, 294 Wis. 2d 100, 718 N.W.2d 649.

Stephens brought this motion in 2015, arguing that his sentence was excessive and “unduly harsh” and that the PSI was “defective” as it should have included DOC form 2244; “PSI Risk Assessment.” We agree with the circuit court that there is no merit to Stephens’ current appeal. Stephens offers no “sufficient reason” for his failure to raise these issues in his direct appeal. We further conclude that our decision in Stephens’ direct appeal addressed issues related to his sentencing and matters involving the presentence report.

Finality in litigation requires that a defendant raise all grounds regarding postconviction relief in his original appeal. *Escalona-Naranjo*, 185 Wis. 2d at 181. Successive motions run counter to the design and purpose of our appellate legislation. Stephens’ current appeal raises issues that were or certainly could have been raised on direct appeal. To the extent that the issues were not expressly raised (Stephens points to no statutory requirement that DOC form 2244 was required as part of the PSI), they could have been raised, but competent postconviction counsel did not raise them. Stephens’ motion is without merit and is procedurally barred by *Escalona-Naranjo*.

IT IS ORDERED that the order of the circuit court denying defendant’s postconviction motion is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals