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DISTRICT II

March 29, 2017

To:

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

2015AP280-CR

State of Wisconsin v. Courtney Leon Cobbs (L.C. # 2003CF1018)

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

Courtney Leon Cobbs appeals pro se from an order denying his motion for DNA testing of certain evidence at private expense pursuant to WIS. STAT. § 974.07 (2015-16)¹ 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. We affirm the order of the circuit court.

In 2006, Cobbs was convicted of being a party to the crime of armed robbery, attempted first-degree homicide, first-degree recklessly endangering safety, and possession of a firearm as a

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

felon. This court affirmed his conviction. *State v. Cobbs*, No. 2007AP501-CR, unpublished slip op. (WI App Jan. 23, 2008).

In 2014, Cobbs moved for DNA testing of certain evidence at private expense pursuant to WIS. STAT. § 974.07. Following a hearing on the matter, the circuit court denied his motion. This appeal follows.

On appeal, Cobbs contends that the circuit court erred in denying his motion for DNA testing of evidence. He maintains that he has the right to such testing at private expense under WIS. STAT. § 974.07. We conclude that Cobbs' argument is foreclosed by the Wisconsin Supreme Court's recent decision of *State v. Denny*, 2017 WI 17, ___ Wis. 2d ___, ___N.W.2d ___.²

In *Denny*, the Wisconsin Supreme Court reexamined WIS. STAT. § 974.07 and concluded that the statute did not independently authorize DNA testing of evidence at private expense. *Denny*, ___ Wis. 2d ___, ¶69. Rather, a movant must meet a number of conditions set forth in the statute before a court may conclude he or she is entitled to testing. *Id.*, ¶73. Because Cobbs' motion did not meet those conditions here, we are satisfied that the circuit court properly denied it.

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 On April 11, 2016, we issued an order holding this appeal in abeyance pending final disposition of the appeal in *State v. Denny*, 2015AP202-CR.