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DISTRICT I

March 27, 2017

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

2016AP389 State of Wisconsin v. Myron Elcado Edwards
(L.C. # 1996CF960232A)

Before Kessler, Brash and Dugan, JJ.

Myron Elcado Edwards, *pro se*, appeals an order denying him an evidentiary hearing and other relief following entry of an amended judgment of conviction in December 2015. He argues that entry of the amended judgment entitled him to pursue claims in regard to his 1996 convictions and related restitution obligation. The circuit court determined that his claims are barred. Upon our review of the briefs and record, we conclude at conference that this matter is

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(2015-16).[1] We summarily affirm.

An overview of Edwards's substantial litigation history is necessary. A jury found Edwards guilty in 1996 of two counts of first-degree intentional homicide, one count of attempted first-degree intentional homicide, one count of attempted armed robbery, and five counts of armed robbery, all as a party to a crime. At sentencing, the circuit court imposed two consecutive life terms without parole, a consecutive aggregate sentence of 260 years in prison, and restitution—in an amount to be determined—to be paid from twenty-five percent of his prison funds. In 2000, following a hearing, the circuit court established the restitution amount as more than $53,000.

After we reinstated Edwards's direct appeal rights, Edwards filed an unsuccessful postconviction motion, then pursued a direct appeal from the judgment of conviction and postconviction order. We affirmed. *See* ***State v. Edwards*** (***Edwards I***), No. 2005AP1324-CR, unpublished slip op. (WI App Mar. 27, 2007). He subsequently filed a *pro se* collateral attack on his convictions pursuant to WIS. STAT. § 974.06. The circuit court denied the claims, and we affirmed. ***State v. Edwards*** (***Edwards II***), No. 2008AP1186, unpublished slip op. (WI App May 27, 2009).

Edwards also pursued a series of *pro se* motions challenging the restitution order. The circuit court dismissed the first of these motions, filed in January 2006, and denied the second, filed in August 2007. Edwards did not appeal. In November 2010, Edwards filed another

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

motion to modify restitution. The circuit court denied the motion, and we affirmed. *See* ***State v. Edwards*** (***Edwards III***), No. 2010AP3151-CR, unpublished slip op. (WI App Dec. 28, 2011). Edwards again moved to modify restitution in July 2013, but did not appeal the order denying relief.[2]

This brings us to December 2015, when the Department of Corrections asked the circuit court to amend Edwards's judgment of conviction by including the offense date and felony classification for each count. The circuit court entered an order granting the request on December 18, 2015. On January 5, 2016, Edwards filed a document styled a "response" to the DOC. In that document, Edwards demanded a hearing on the DOC's request and raised numerous claims for relief from his convictions and his restitution obligation. The circuit court denied his claims without a hearing, and this appeal followed.

Edwards argues that the circuit court could not amend the judgment of conviction without affording him a hearing. We disagree. A defendant is not entitled to a hearing before a circuit court corrects a clerical error in a judgment of conviction. *See* ***State v. Prihoda***, 2000 WI 123, ¶33, 239 Wis. 2d 244, 618 N.W.2d 857. An error is clerical when it is "minor and mechanical," *see* ***id.***, ¶31, '"a mere omission to preserve of record, correctly in all respects, the actual decision of the court,'" ***id.***, ¶15 n.6 (citation omitted). The omissions that concerned the DOC in this case are textbook examples of clerical errors in a judgment of conviction warranting circuit court correction without a hearing.

[2] The litigation history that we describe does not include the various petitions for writs that Edwards filed in this court. A summary of those petitions is not necessary to an understanding of our decision in the instant matter.

Edwards contends that the circuit court not only added previously omitted information to the judgment of conviction but also "subtract[ed]" from the judgment the subsections of the armed robbery statute under which he was convicted. This assertion is incorrect. The citations to the armed robbery statute in the amended judgment entered in 2015 are exactly the same as those appearing in the previously amended judgment entered in 2000.[3]

Edwards next argues that his convictions violate his constitutional rights. We agree with the circuit court that these claims are procedurally barred.

WISCONSIN STAT. § 974.06 allows a convicted prisoner to raise constitutional and jurisdictional claims after the time for a direct appeal has passed. *See* ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 177, 517 N.W.2d 157 (1994). There is, however, a limitation: an issue that could have been raised on direct appeal or by prior motion is barred absent a sufficient reason for failing to raise the issue in the earlier proceedings. *See* ***id.*** at 181-82. We adhere to this policy because "[w]e need finality in our litigation." *See* ***id.*** at 185. Whether a convicted person states a reason sufficient to avoid the procedural bar is a question of law for our *de novo* review. *See* ***State v. Kletzien***, 2011 WI App 22, ¶16, 331 Wis. 2d 640, 794 N.W.2d 920.

According to Edwards, he is entitled to raise collateral challenges to his convictions now because the 2015 amended judgment of conviction omits reference to the subsections of the armed robbery statute that appear in the charging documents and original judgment. He claims the omissions "effectively hide[]" the errors he believes entitle him to relief. This contention

[3] In 2000, the circuit court was unable to find the original judgment of conviction in the record and entered an amended judgment of conviction at that time. As Edwards recognizes, the original judgment is also presently in the record as item R.32.

does not constitute a sufficient reason for serial litigation. As already noted, the amended judgment entered in 2000 also omits reference to subsections of the armed robbery statute. Edwards fails to explain why he could not have raised challenges based on those omissions in his prior motions.

Edwards next asserts that he may move to modify the restitution order because his claim constitutes a sentence modification motion, not a motion under WIS. STAT. § 974.06. In ***Edwards III***, we assumed without deciding that ***Escalona-Naranjo*** does not bar Edwards's efforts to obtain relief from his restitution order on the ground that he cannot pay. *See* ***Edwards III***, unpublished slip op. ¶12. ***Edwards III*** arose when Edwards sought relief from his restitution obligation in reliance on ***State v. Dugan***, 193 Wis. 2d 610, 625, 534 N.W.2d 897 (Ct. App. 1995), which states in part that "if in the future [the defendant] believes that he is unable to meet his restitution obligation, he can bring a motion for modification of the sentence at that time." We rejected Edwards's claim because ***Dugan*** requires the defendant to show a change in financial circumstances, and Edwards failed to make such a showing. *See* ***Edwards III***, unpublished slip op. ¶12.

In the instant litigation, Edwards again cites ***Dugan*** and goes on to suggest his circumstances have changed because in 2012 he "received a Chapter 7 bankruptcy discharge for the restitution obligation." Although Edwards submitted documents purportedly showing such a discharge, nonetheless, any bankruptcy discharge he may have received is irrelevant to his restitution obligation because "a restitution order is not dischargeable in bankruptcy."[4] *See* ***State***

[4] We observe that, to the extent Edwards discharged debts in bankruptcy other than his restitution obligation, he appears to be better able now than before the bankruptcy discharge to pay his restitution.

v. Fernandez, 2009 WI 29, ¶26, 316 Wis. 2d 598, 764 N.W.2d 509. Moreover, a claim of changed circumstances based on events in 2012 comes too late. As we have seen, Edwards moved to modify his restitution in 2013. Because he could have raised the issue of his 2012 bankruptcy in his 2013 motion, he cannot base a claim for relief on that bankruptcy now. *See* ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (postconviction motion may not be used to raise issues that could have been litigated previously); *see also* ***State v. Franklin***, 148 Wis. 2d 1, 8-9, 434 N.W.2d 609 (1989) (policy of promoting finality that applies to motions under WIS. STAT. § 974.06 also applies to sentence modification motions).

Finally, Edwards asserts the original sentencing court lacked authority to order that restitution payments be deducted from his prison funds. He argues he is not barred from pursuing this claim because, he says, he raised the issue in circuit court under WIS. STAT. § 806.07(1)(d), not WIS. STAT. § 974.06. In fact, Edwards did not cite § 806.07 in his circuit court submission, and we generally do not consider arguments presented for the first time on appeal. *See* ***Northbrook Wisconsin, LLC. v. City of Niagara***, 2014 WI App 22, ¶20, 352 Wis. 2d 657, 843 N.W.2d 851. Regardless, § 974.06 is the mechanism that permits convicted persons to raise jurisdictional claims after the time for an appeal has passed. *See* ***State v. Henley***, 2010 WI 97, ¶¶52-53, 328 Wis. 2d 544, 787 N.W.2d 350. Here, Edwards explicitly raised a jurisdictional challenge to the 1996 restitution order, the kind of claim that is cognizable under § 974.06. Because he did not offer a sufficient reason for failing to present his challenge in prior litigation, the claim is barred. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 181-82.

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