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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

May 8, 2017

To:

Hon. Frank D. Remington
Circuit Court Judge, Br 8
Dane County Courthouse
215 South Hamilton, Rm 4103
Madison, WI 53703

Ismael R. Ozanne
District Attorney
Rm. 3000
215 South Hamilton
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
215 S. Hamilton, Rm. 1000
Madison, WI 53703

Tarus A. Moore 19055-026
FCI - Pekin
P. O. Box 5000
Pekin, IL 61555-5000

Donald V. Latorraca
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

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

2016AP833

State of Wisconsin v. Tarus A. Moore (L.C. # 2009CF6)

Before Kloppenburg, P.J., Lundsten and Sherman, JJ.

Tarus Moore, pro se, appeals an order denying his motion for postconviction relief filed under WIS. STAT. § 974.02 (2015-16).¹ Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We summarily affirm. *See* WIS. STAT. RULE 809.21.

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

Moore entered a no contest plea to one count of strangulation and suffocation. The circuit court withheld sentence and placed Moore on probation for two years. At the sentencing hearing, the court informed Moore of his right to appeal, and informed him that the appeal process must be started within twenty days. Moore executed form CR-233, Notice of Right to Seek Postconviction Relief, acknowledging that he had discussed his right to seek postconviction relief with his lawyer and that he understood that if he intended to seek postconviction relief, he had to file a notice of intent to pursue postconviction relief in the circuit court within twenty days of sentencing. Moore checked the box on form CR-233 indicating that he did not plan to seek postconviction relief.

After Moore had served his sentence and been issued a discharge certificate by the Department of Corrections, he filed a postconviction motion under WIS. STAT. § 974.06, alleging that he received ineffective assistance of trial counsel. The circuit court denied the motion on the basis that, having been discharged, Moore did not meet the requirement under WIS. STAT. § 974.06(1) of being “a prisoner in custody” under a sentence imposed by the court.

Moore then moved for postconviction relief under WIS. STAT. § 974.02, raising the same ineffective assistance claim that he raised in his prior motion under WIS. STAT. § 974.06. The circuit court denied the motion filed under WIS. STAT. § 974.02 on the basis that Moore failed to file a notice of intent to pursue postconviction relief within twenty days of sentencing, as required under WIS. STAT. RULE 809.30(2)(b). Moore now appeals.

We conclude that the circuit court properly denied Moore’s motion. A motion under WIS. STAT. § 974.02 “shall be made in the time and manner provided in s. 809.30.” WIS. STAT. § 974.02(1). Under WIS. STAT. RULE 809.30(2)(b), a defendant seeking postconviction relief

“shall file in circuit court and serve on the prosecutor and any other party a notice of intent to pursue postconviction or postdisposition relief” within twenty days after the date of sentencing or final adjudication. According to RULE 809.30(1)(f), sentencing in a criminal felony case includes the imposition of probation.

In this case, Moore was sentenced to two years of probation on March 1, 2010. He never filed a notice of intent to pursue postconviction relief. He completed his probation. He did not file his motion under WIS. STAT. § 974.02 until February 12, 2016—nearly six years after sentencing. WISCONSIN STAT. § 974.02 and RULE 809.30 indicate that criminal defendants seeking to challenge their convictions through a postconviction motion, appeal, or both, must abide by the specific procedures and time limitations for pursuing postconviction relief in RULE 809.30. See *State v. Henley*, 2010 WI 97, ¶¶48-49, 328 Wis. 2d 544, 787 N.W.2d 350. Moore failed to follow the procedural requirement under RULE 809.30(2)(b) of filing a notice of intent to pursue postconviction relief within twenty days of sentencing. Accordingly, the circuit court properly concluded that his motion under WIS. STAT. § 974.02 was procedurally barred.

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

Diane M. Fremgen
Clerk of Court of Appeals