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DISTRICT II

June 28, 2017

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

2015AP1888

State of Wisconsin v. Scott E. Ziegler (L.C. # 2008CF120)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Scott E. Ziegler appeals pro se from an order denying his motion for postconviction discovery. 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 (2015-16).¹ We affirm the order of the circuit court.

In 2009, Ziegler was convicted following a jury trial of fourteen counts stemming from allegations that he sexually assaulted, physically abused, and held in his home several underage

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

girls. Ziegler appealed, and his convictions were upheld on review. *See State v. Ziegler*, 2012 WI 73, 342 Wis. 2d 256, 816 N.W.2d 238.

Before trial, Ziegler's counsel filed a motion for an *in camera* inspection of juvenile victim and witness records held by the juvenile court and county service agencies. The circuit court granted the motion and conducted the review. It subsequently determined that some documents were relevant and released them under seal to the parties.² The court noted that Ziegler's name "came up ... a few times" in other documents; however, it declined to release those, as they were not helpful to Ziegler's case.³

In 2012, shortly after his convictions were upheld, Ziegler began filing pro se requests for postconviction discovery. In them, he sought a number of items including: (1) copies of the documents released under seal; (2) copies of any new records that were responsive to his counsel's original motion; and (3) copies of the documents that referred to him but were not disclosed because they were not helpful to his case. The circuit court denied the requests, indicating that it would not compel the State "to repeat the discovery process" that had already occurred.

In 2013, Ziegler filed a WIS. STAT. § 974.06 motion seeking a new trial. He appended to his motion another request for postconviction discovery. Again, Ziegler sought the three sets of

² These documents included judgments of delinquency for two juvenile witnesses and a portion of a psychological evaluation for another juvenile witness. The court ordered that the documents "be held by Defendant's Counsel and the State and shall not be copied or disseminated in any way subject to contempt."

³ The circuit court described the references in the other documents as "harmful to [Ziegler's] case, or cumulative to other evidence already available to [him]."

materials that he asked for earlier. Again, the circuit court denied the request along with the § 974.06 motion. This court affirmed those denials. See *State v. Ziegler*, No. 2014AP219, unpublished slip op. and order (WI App Feb. 18, 2015).

In 2015, Ziegler filed yet another motion for postconviction discovery. Again, Ziegler sought the three sets of materials that he asked for in 2012 and 2013. Again, the circuit court denied the motion. This appeal follows.

“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 unless the defendant demonstrates a sufficient reason for failing to raise the claim earlier. See *id.* A motion for postconviction discovery qualifies as a subsequent motion for purposes of *Escalona*. See *State v. Kletzien*, 2011 WI App 22, ¶¶11-13, 331 Wis. 2d 640, 794 N.W.2d 920. Furthermore, a defendant may not relitigate a matter previously litigated, “no matter how artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Applying these principles, we conclude that Ziegler’s latest motion for postconviction discovery is procedurally barred. As noted by the State, Ziegler has not demonstrated a sufficient reason for failing to raise his motion earlier. Moreover, his request for the materials at issue was previously adjudicated by both this court and the circuit court. Ziegler cannot

relitigate the matter. *Id.* Accordingly, we are satisfied that the circuit court properly denied his motion.⁴

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

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

Diane M. Fremgen
Clerk of Court of Appeals

⁴ To the extent we have not addressed an argument raised by Ziegler on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).