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DISTRICT IV

July 11, 2017

To:

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

2016AP314

State of Wisconsin v. Terrance J. Shaw (L.C. # 1982CF266)

Before Lundsten, Sherman and Blanchard, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Terrance Shaw appeals an order denying his postconviction motion. 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.

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

Shaw filed a postconviction motion that was captioned as one under WIS. STAT. § 974.06. The circuit court denied the motion. On appeal, Shaw presents his claim as being one for a new trial based on newly discovered evidence.

In response, the State does not develop an argument on newly discovered evidence. Instead, the State asserts, referring in part to that legal theory, that “[b]eyond introducing these concepts, however, Shaw does not engage in any substantive analysis of them or explain why the facts of his case satisfy either standard.” That assertion is inexplicable when pages three through six of Shaw’s eight-page brief discuss, under separate and clearly labeled headings, each of the five factors to be considered on a claim of newly discovered evidence. However, despite the State’s failure to develop an argument responding to what Shaw’s brief presents as the central issue, we conclude that Shaw’s argument fails.

Two of the factors for a newly discovered evidence claim are whether the evidence is material to an issue and whether a reasonable probability exists of a different result in a new trial. *State v. Krieger*, 163 Wis. 2d 241, 255, 471 N.W.2d 599 (Ct. App. 1991). Here, Shaw argues that his post-trial diagnosis of post-traumatic stress disorder would have been material to a defense of not guilty by reason of mental disease or defect. However, Shaw does not explain what specific connection he would show that existed between that diagnosis and his conduct. Without such a connection, the diagnosis itself is not material to any issue, and does not show a reasonable probability of a different result in a new trial.

IT IS ORDERED that the order appealed is summarily affirmed under WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals