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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

September 5, 2017

To:

Hon. Stephen E. Ehlke
Circuit Court Judge
215 South Hamilton, Br.15, Rm. 7107
Madison, WI 53703

Christine A. Remington
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

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

James Edward Grant
2428 E. Washington Ave., Apt. 15
Madison, WI 53704

Erin Hanson
Asst. District Attorney
Rm. 3000
215 South Hamilton St.
Madison, WI 53703

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

2015AP2549	State of Wisconsin v. James Edward Grant
2015AP2550	(L.C. Nos. 2012CF1541, 2012CM1754, 2012CM2488)
2015AP2551	

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

James Edward Grant, pro se, appeals from a circuit court order denying his motion for postconviction relief. 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.

In these consolidated cases, Grant pleaded guilty to two counts of retail theft and one count of disorderly conduct. Several other charges were dismissed pursuant to the plea agreement. He was sentenced to three two-year terms of imprisonment, to run consecutively. Grant filed a motion to withdraw his plea and vacate his sentence, which was denied. We affirmed. Grant then filed a second postconviction motion, arguing that he was questioned without receiving his *Miranda* rights. *See Miranda v. Arizona*, 384 U.S. 436 (1966). The circuit court construed this as a motion for a *Miranda* hearing and denied it. Grant appeals the denial of this second postconviction motion.

In his appeal to this court, Grant does not make any mention of the *Miranda* issue that he presented to the circuit court. Instead, he argues that the circuit court relied on incorrect information about his criminal history when sentencing him.

The State contends that regardless of what Grant is arguing in this appeal, his second postconviction motion is barred by WIS. STAT. § 974.06(4). Specifically, a defendant cannot raise an argument in a second postconviction motion that was not raised in a prior postconviction motion unless there is a sufficient reason for the failure to allege or adequately raise the issue in the original motion. *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). Alternatively, to the extent that Grant is repeating arguments made in his first

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

postconviction motion, these matters may not be relitigated. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Grant declined to file a reply brief. As such, he is deemed to have conceded the State's arguments. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994). We therefore conclude that Grant's second postconviction motion is barred by WIS. STAT. § 974.06(4).

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed pursuant to 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