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October 18, 2017

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

2016AP2283

State of Wisconsin v. Abraham McCormick (L.C.# 2014CF201)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

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).

Abraham McCormick appeals from an order of the circuit court 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

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

In July 2014, officers stopped a vehicle after learning that it was registered to a person without a valid driver's license. The driver identified himself, but the passenger—who turned out to be McCormick—refused to do so on the basis that “he was a sovereign citizen.” The officers arrested the driver for driving with a revoked license and informed the passenger that he was free to leave. Prior to having the vehicle towed, the officers conducted an inventory search of the vehicle and discovered two handguns in the glovebox. The officers then approached McCormick again, who was still nearby, and asked him to identify himself, to which he “continued to recite that he was a sovereign citizen.” The officers arrested McCormick as well. McCormick was charged with possessing a firearm as a felon, felony bail jumping, and resisting an officer. He was convicted of all charges after a jury trial and sentenced.

McCormick moved for postconviction relief under WIS. STAT. RULE § 809.30. Among other issues, McCormick argued that the officers lacked reasonable suspicion to detain him and the officers towed the vehicle “without authority of law.” The circuit court denied the motion. McCormick then filed another motion, this one for sentence modification and “cancellation of count 4,” the possession of a firearm by a felon count. This motion again took issue with the validity of the traffic stop and the officers' decision to detain and ultimately arrest McCormick. The circuit court denied the motion and explained that it had “already heard post conviction motions and rejected these arguments” previously. McCormick continued his attack on his convictions by filing a petition for a writ of habeas corpus. McCormick again asserted that the stop and detention were unlawful. The circuit court denied the petition, reasoning that “[t]here is nothing in McCormick's new petitions that was not already addressed pre-trial, in post-conviction motions,” and in a separate decision on his petition for writ of certiorari.

McCormick then filed the WIS. STAT. § 974.06 motion that is at issue in this appeal. This motion reiterates his previous arguments that he was unlawfully detained, and the officers unlawfully searched the vehicle. The circuit court denied this motion as well, explaining the serial nature of McCormick's arguments:

In this motion, McCormick challenges the "stop" in this case and the evidence that flowed from the stop....

McCormick's serial filings continued to raise the same issue, and are barred by the anti-serial appeal doctrine set forth in *State v. Escalona-Naranjo*, 185 Wis.2d 168, 173, 517 N.W.2d 157 (1994) The arguments could have been raised, they were raised, and they were previously rejected.

McCormick appeals this latest denial of his challenge to the stop and subsequent search of the vehicle.

It is well established that "[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding 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). As the State points out, all of McCormick's arguments in this present postconviction motion are slight variations of the same arguments he has made throughout postconviction proceedings. McCormick offers no real answer to this, but instead continues to assert that the stop and detention were invalid and the evidence against him should have been suppressed. McCormick's challenges have already been decided, and he cannot keep raising the same arguments hoping for a different result. Even if McCormick raised new arguments in his motion, he would still be barred because he has not shown a sufficient reason for failing to bring these arguments during his previous postconviction motions. See *Escalona*, 185 Wis. 2d at 184-85.

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.

Diane M. Fremgen
Clerk of Court of Appeals