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December 11, 2017

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

2015AP1848	State of Wisconsin v. Demonta Lamar Hambright (L.C. # 2011CF2114)
2015AP1849	State of Wisconsin v. Demonta Lamar Hambright (L.C. # 2011CF4008)

Before Brennan, P.J., Kessler and Brash, 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).

Demonta Lamar Hambright, *pro se*, appeals orders that denied reconsideration of his motions for postconviction discovery.[1] Upon our review of the briefs and records, we conclude

[1] Hambright filed the same motions in each of the circuit court cases underlying these appeals, and the circuit court entered identical orders in each case in response.

at conference that these matters are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).[2] We summarily affirm.

Proceedings in two Milwaukee County criminal cases underlie these consolidated appeals. In case No. 2011CF2114, the State charged Hambright with second-degree sexual assault, false imprisonment, and disorderly conduct. In case No. 2011CF4008, the State charged Hambright with two counts of feloniously intimidating a witness as a repeat offender. The alleged victim in both sets of charges was his wife. The cases were consolidated and proceeded to a joint trial. The jury acquitted Hambright of the counts charged in case No. 2011CF2114, and convicted him of the other two counts. He pursued appeals in both cases. We dismissed the appeal from the acquittals in case No. 2011CF2114, explaining that an appeal may be taken only from an adverse order. *See* ***State v. Hambright***, No. 2013AP2198-CR, unpublished op. and order (WI App Oct. 7, 2013). We affirmed Hambright's convictions in case No. 2011CF4008. *See* ***State v. Hambright***, No. 2013AP2016-CR, unpublished slip op. (WI App July 29, 2014).

On March 31, 2015, Hambright filed in both circuit court cases a document titled "Motion for Production Pursuant to 19.35 Wis. Stats., and WTMJ 555 N.W.2d 140 (1996)[3] And Other Evidence." (Punctuation modified; footnote added). In the motion, he stated that he sought postconviction discovery pursuant to ***State v. O'Brien***, 223 Wis. 2d 303, 588 N.W.2d 8 (1999). Specifically, Hambright requested anything written by his wife, and he sought all

[2] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[3] *See* ***WTMJ, Inc. v. Sullivan***, 204 Wis. 2d 452, 555 N.W.2d 140 (Ct. App. 1996).

recordings between himself and his wife, including telephone calls. By orders dated April 6, 2015, the circuit court denied the motion.

Hambright moved to reconsider. By orders dated May 6, 2015, the circuit court denied reconsideration, stating that Hambright could seek the materials he wanted through alternative routes.

On July 1, 2015, Hambright moved for the second time to reconsider the April 6, 2015 orders denying postconviction discovery. In support, he attached various documents to show his efforts to obtain the materials he wanted, and he alleged that those efforts had proved unsuccessful. By orders of July 8, 2015, the circuit court denied the motion, holding that Hambright had not demonstrated a right to postconviction discovery under ***O'Brien***. Hambright filed a notice of appeal on August 18, 2015.[4]

As a preliminary matter, we must determine the extent of our jurisdiction in these appeals. *See* ***Carla B. v. Timothy N.***, 228 Wis. 2d 695, 698, 598 N.W.2d 924 (Ct. App. 1999) (reflecting that we have an obligation to inquire into our own jurisdiction). With exceptions not applicable here, the deadline for filing a notice of appeal is normally the ninetieth day after entry of a final order. *See* WIS. STAT. § 808.04(1). A timely notice of appeal is necessary to confer appellate jurisdiction on this court. *See* WIS. STAT. RULE 809.10(1)(e). Hambright filed his

[4] The Honorable Rebecca F. Dallet presided over the postconviction proceedings discussed in this opinion. The Honorable David Borowski signed the July 8, 2015 orders, stating that he did so for Judge Dallet. Hambright complains that Judge Borowski's signature on the July 8, 2015 orders constitutes a "forgery." Hambright is mistaken. *See* WIS. STAT. § 943.38 (defining forgery). To the extent that Hambright suggests that the signature entitles him to relief of some kind, he did not raise the issue in circuit court, and we will therefore not consider his suggestion here. *See* ***Shadley v. Lloyds of London***, 2009 WI App 165, ¶25, 322 Wis. 2d 189, 776 N.W.2d 838 (explaining that "issues not presented to the [circuit] court will not be considered for the first time at the appellate level").

notice of appeal in these matters on August 18, 2015. That date is more than ninety days after the final orders entered on April 6, 2015, and May 6, 2015.[5] Accordingly, we lack jurisdiction to review those orders.

Hambright filed his notice of appeal within ninety days after entry of the July 8, 2015 final orders denying reconsideration of the claim for postconviction discovery. Accordingly, his appeal is timely as to those orders. *See* WIS. STAT. § 808.04(1). Nonetheless, an order denying reconsideration is not automatically appealable. *See* ***Harris v. Reivitz***, 142 Wis. 2d 82, 86, 417 N.W.2d 50 (Ct. App. 1987). A party may appeal such an order only if the motion seeking reconsideration presented new issues that were not resolved in the original motion. *See* ***id.*** at 86-87. We liberally apply the "new issues" test. *See* ***id.*** at 88. In this case, Hambright's final request for reconsideration focused on his alleged efforts to obtain the materials he wanted by routes other than a motion for postconviction discovery, and he submitted supporting documents not previously presented. Accordingly, we conclude that we have jurisdiction to review the orders denying relief. We turn to that review.

We first hold that the circuit court properly denied Hambright's motion for postconviction discovery in case No. 2011CF2114. Hambright was not convicted in that case and therefore has no basis to seek postconviction relief. Moreover, as ***O'Brien*** reflects, the right

[5] The ninety-day deadline for filing a notice of appeal from the final orders of April 6, 2015, fell on July 6, 2015; and the ninety-day deadline for filing a notice of appeal from the orders of May 6, 2015, fell on August 4, 2015. *See* WIS. STAT. RULE 809.82(1); WIS. STAT. § 801.15(1). As we have seen, Hambright did not file a notice of appeal until August 18, 2015. We add that, although the prison mailbox tolling rule allows *pro se* prisoners to launch a timely appeal by placing a notice of appeal in the prison mail system by the filing deadline, *see* ***State ex rel. Kelley v. State***, 2003 WI App 81, ¶¶3, 12, 261 Wis. 2d 803, 661 N.W.2d 854, that rule does not assist Hambright. His notice of appeal was notarized on August 12, 2015. Thus, it could not have been placed in the prison mail system in time to preserve an appeal from the April 6, 2015 and May 6, 2015 orders.

to postconviction discovery is tied to the defendant's due process right to present a complete defense. *See* ***id.***, 223 Wis. 2d at 320. Hambright cannot show that he required additional discovery to complete his defense in case No. 2011CF2114, because the defense he presented vindicated him completely. In short, a claim for postconviction discovery is unavailable in case No. 2011CF2114.

We also conclude that the circuit court properly denied Hambright's claim for postconviction discovery in case No. 2011CF4008. The claim was barred.

WISCONSIN STAT. § 974.06 is the mechanism by which a convicted person may raise claims after the time for a direct appeal has passed. *See* ***State v. Henley***, 2010 WI 97, ¶50, 328 Wis. 2d 544, 787 N.W.2d 350. There is, however, a limitation. Pursuant to § 974.06(4), a prisoner who wishes to pursue a second or subsequent postconviction motion must demonstrate a sufficient reason for failing in the original postconviction proceeding to raise or adequately address the issues. *See* ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 184-85, 517 N.W.2d 157 (1994). The rule furthers the goal of finality, which is "central to the fair and efficient administration of justice." *See* ***Henley***, 328 Wis. 2d 544, ¶53.

"There is no exception to the ***Escalona-Naranjo*** rule for postconviction discovery motions." ***State v. Kletzien***, 2011 WI App 22, ¶2, 331 Wis. 2d 640, 794 N.W.2d 920. Therefore, before Hambright could pursue his claim for postconviction discovery in case No. 2011CF4008, he was required to demonstrate a sufficient reason for failing to raise or to fully litigate the claim in his original appeal from the judgment in that case. We determine the sufficiency of Hambright's reason for serial litigation by examining the four corners of his postconviction motion. *See* ***State v. Allen***, 2004 WI 106, ¶27, 274 Wis. 2d 568, 682 N.W.2d 433.

We have reviewed the July 1, 2015 motion for reconsideration, as well as the underlying motion for postconviction discovery filed on March 31, 2015. Neither motion offers any reason, much less a sufficient reason, that Hambright failed to litigate all of his claims, including his claim for postconviction discovery, during his first appeal. Accordingly, ***Escalona-Naranjo*** bars his current claim for postconviction discovery in case No. 2011CF4008.

Moreover, the claim for postconviction discovery is barred for an additional reason, namely, Hambright's prior litigation of the same claim. On January 26, 2015, Hambright filed in both circuit court cases a document titled, in part, "Motion to Obtain All Evidence." In the motion, he sought discovery in regard to a wide range of items, including but not limited to: "all disc[s] ... in the State's possession"; "all phone recordings between [Hambright] and the alleged victim (his wife)"; and "any and all letters, and affidavits the alleged victim sent this court after defendant was sentenced June 15, 2012." By orders dated January 27, 2015, the circuit court denied the motion. Hambright did not file a notice of appeal. Accordingly, his claim for postconviction discovery was fully litigated and resolved in circuit court. *See* ***Kriesel v. Kriesel***, 35 Wis. 2d 134, 138, 150 N.W.2d 416 (1967) (in absence of appeal, circuit court decision is conclusive). "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).

No additional issues warrant discussion.[6] Accordingly, upon the foregoing reasons,

IT IS ORDERED that the orders of July 8, 2015, are summarily affirmed.

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

Diane M. Fremgen
Clerk of Court of Appeals

[6] Hambright's appellate briefs include arguments alleging that these cases involve "newly discovered evidence," that trial counsel was ineffective, and that the State engaged in misconduct. Hambright did not present these arguments to the circuit court, so we will not address them now. *See* ***Shadley***, 322 Wis. 2d 189, ¶25. Hambright also argues on appeal that the circuit court was biased against him. In February 2015, Hambright moved the circuit court to recuse itself on the ground of alleged judicial bias, and the circuit court denied the motion by orders entered on March 5, 2015. Hambright did not file any notice of appeal thereafter until August 18, 2015, long after the ninety-day appellate deadline expired on June 3, 2015. Accordingly, the issue of judicial bias is not before us. *See* WIS. STAT. RULE 809.10(1)(e).