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DISTRICT IV

December 12, 2017

To:

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

2016AP1623	State of Wisconsin v. Tarus A. Moore (L.C. # 2001CF2223)
2016AP1624	State of Wisconsin v. Tarus A. Moore (L.C. # 2002CF123)

Before Sherman, Kloppenburg and Fitzpatrick, 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).

Tarus Moore appeals an order that denied his motion for postconviction relief from two criminal judgments of conviction that were entered in 2002. After reviewing the record, we

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm for the reasons discussed below.

Moore sought to vacate the judgments under WIS. STAT. § 974.02 or, alternatively, under WIS. STAT. § 974.06, alleging that he was not present at the joint plea hearing and did not agree to enter pleas to all of the charges of which he was convicted. However, as the circuit court correctly determined, neither statutory mechanism is available to provide the relief Moore is seeking in the procedural posture of these cases.

First, a defendant seeking to challenge a judgment of conviction under WIS. STAT. § 974.02, must file a notice of intent to seek postconviction relief within twenty days after the entry of the judgment at issue. WIS. STAT. § 974.02(1); WIS. STAT. RULE 809.30(2)(b); *State v. Henley*, 2010 WI 97, ¶49, 328 Wis. 2d 544, 787 N.W.2d 350. Electronic docket entries show (and Moore does not dispute) that Moore did not file a notice of intent to seek postconviction relief in either of these cases. Moore’s failure to file a timely notice of intent to seek postconviction relief is fatal to his claim for relief under WIS. STAT. § 974.02. *State v. Tobey*, 200 Wis. 2d 781, 784, 548 N.W.2d 95 (Ct. App. 1996).

Second, WIS. STAT. § 974.06 is available only to a “prisoner [] in custody” under the sentence he seeks to challenge. *State v. Bell*, 122 Wis. 2d 427, 428, 362 N.W.2d 443 (Ct. App. 1984). Electronic docket entries show (and again, Moore does not dispute) that the DOC discharged Moore from his probation in Dane County Case No. 2001CF2223 in November of 2007, and discharged him from his probation in Dane County Case No. 2002CF123 in March of

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

2009. Therefore, the circuit court also lacked subject matter jurisdiction to hear Moore's motion under WIS. STAT. § 974.06. *Id.* at 430.

IT IS ORDERED that the circuit court's postconviction order is summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Diane M. Fremgen
Clerk of Court of Appeals